

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRUCE CORKER d/b/a RANCHO ALOHA;
COLEHOUR BONDERA and MELANIE
BONDERA, husband and wife d/b/a KANALANI
OHANA FARM; and ROBERT SMITH and
CECELIA SMITH, husband and wife d/b/a
SMITHFARMS, on behalf of themselves and
others similarly situated,

Plaintiffs,

v.

COSTCO WHOLESALE CORPORATION, a
Washington corporation; AMAZON.COM, INC., a
Delaware corporation; HAWAIIAN ISLES KONA
COFFEE, LTD., LLC, a Hawaiian limited liability
company; COST PLUS/WORLD MARKET, a
subsidiary of BED BATH & BEYOND, a New
York corporation; BCC ASSETS, LLC d/b/a
BOYER'S COFFEE COMPANY, INC., a
Colorado corporation; L&K COFFEE CO. LLC, a
Michigan limited liability company; KEVIN
KIHNKE, an individual; MULVADI
CORPORATION, a Hawaii corporation; COPPER
MOON COFFEE, LLC, an Indiana limited liability
company; GOLD COFFEE ROASTERS, INC., a
Delaware corporation; DEFENDANT COFFEE
AND DISTRIBUTION COMPANY, a Minnesota
corporation; PACIFIC COFFEE, INC., a Hawaii
corporation; THE KROGER CO., an Ohio
corporation; WALMART INC., a Delaware
corporation; BED BATH & BEYOND INC., a
New York corporation; ALBERTSONS
COMPANIES INC., a Delaware corporation;
SAFEWAY INC., a Delaware corporation; MNS
LTD., a Hawaii corporation; THE TJX
COMPANIES d/b/a T.J. MAXX, a Delaware
corporation; MARSHALLS OF MA, INC. d/b/a
MARSHALLS, a Massachusetts corporation;
SPROUTS FARMERS MARKET, INC. a
Delaware corporation,

Defendants.

No. 2:19-cv-00290-RSL

**KEVIN KIHNE'S ANSWER TO
PLAINTIFFS' THIRD AMENDED
COMPLAINT – CLASS ACTION**

JURY TRIAL DEMANDED

1 Defendant Kevin Kihnke (“KIHNKE”) files this Answer to Plaintiffs’ Third Amended
 2 Complaint (“Complaint”). To the extent that any allegation in the Complaint is not specifically
 3 admitted, the allegation is denied. In addition, KIHNKE is still investigating the claims brought
 4 by Plaintiffs and reserves the right to supplement this Answer. KIHNKE answers the
 5 corresponding numbered paragraphs of the Complaint as follows:

6 **I. INTRODUCTION**

7 1. This class action is filed on behalf of the Kona coffee farmers who grow the entire
 8 worldwide supply of authentic Kona coffee. Kona coffee, renowned for its distinctive flavor and
 9 aroma, is one of the most famous and revered specialty coffees in the world. But only coffee grown
 10 on farms located within the Kona District of the Big Island of Hawaii (“Kona District” defined in
 11 paragraph 38 below) can be truthfully marketed, labeled, and sold as Kona coffee. The volcanic
 12 soil, the elevation, and the humidity of this region combine to give Kona coffee its distinctive
 13 characteristics. The term “Kona” tells consumers their coffee comes from this distinctive
 14 geographic region.

15 **ANSWER:** KIHNKE admits that Plaintiffs have brought this putative class action against
 16 Defendants. KIHNKE denies that the action is filed on behalf of the Kona coffee farmers because
 17 Defendant is aware of Kona coffee farmers who do not support this lawsuit and who believe that
 18 the economic theories upon which it is based are incorrect, and that, if successful, this lawsuit will
 19 drive down the price paid Kona farmers for their products. KIHNKE denies that only coffee grown
 20 on farms located within the Kona district can be truthfully marketed, labeled, and sold as Kona
 21 coffee. KIHNKE also denies that the term “Kona” tells consumers their coffee comes from any
 22 distinctive region. L&K Coffee Co. does not sell any of the products described in this complaint
 23 and has not sold any since 2019. KIHNKE lacks sufficient information to admit or deny the
 24 remaining allegations in Paragraph 1, and therefore denies the same.

25
 26 2. Plaintiffs bring this action against coffee distributors, wholesalers, and retailers
 27 who for years have wrongfully profited from the goodwill and reputation associated with the

1 geographic region of Kona by passing off ordinary commodity coffee as “Kona” coffee.
2 Defendants’ deceptive practices have flooded the market with counterfeit “Kona” coffee products,
3 injuring honest Kona farmers in two distinct ways. First, the marketplace is overwhelmed with
4 counterfeit “Kona” products, and that excessive supply drives the price down sharply. Second,
5 because the counterfeit products are basically comprised of generic commodity coffee, consumers
6 are misled into concluding that Kona coffee is nothing special. These deceived consumers become
7 less likely to pay a premium for authentic Kona coffee in the future.

8 **ANSWER:** KIHNKE admits that Plaintiffs have brought this action against the
9 Defendants. KIHNKE denies the remaining allegations in Paragraph 2. KIHNKE also specifically
10 denies that there is any type of “ordinary commodity coffee,” or that Defendants’ coffee is
11 “ordinary.” By classifying coffee as an “ordinary commodity type” versus an “authentic Kona,”
12 Plaintiffs wrongfully assume that the majority of coffee consumers paying \$5-10 per pound for
13 coffee: (1) Distinguishes one coffee from another based on its geographic origin; (2) is even aware
14 of an “authentic Kona” product, and (3) Might ever have even the slightest interest in paying \$35
15 to \$50 per pound for “authentic Kona” if the “ordinary commodity” coffee with the word “Kona”
16 on the label did not exist. KIHNKE also denies this allegation because it relies on the term
17 “authentic Kona coffee,” which remains undefined by Plaintiffs. KIHNKE is left without
18 knowledge as to what constitutes “authentic Kona.” KIHNKE will not repeat this issue with the
19 term “authentic Kona” but denies each and every allegation herein that incorporates that term.
20 L&K Coffee Co. does not sell any of the products described in this complaint and has not sold any
21 since 2019. KIHNKE lacks sufficient information to admit or deny the remaining allegations in
22 Paragraph 2, and therefore denies the same.

23
24 3. By their actions, Defendants have artificially depressed the market price of
25 authentic Kona coffee, harmed the reputation of authentic Kona coffee as a premium product, and
26 caused consumer confusion as to the legitimate sources of Kona coffee. As a direct result, Plaintiffs
27

1 have lost considerable profits, and Defendants have made considerable unjust profits, all in
2 violation of the Lanham Act, 15 U.S.C. § 1125.

3 **ANSWER:** KIHNKE denies the allegations in Paragraph 3. L&K Coffee Co. does not sell any
4 of the products described in this complaint and has not sold any since 2019. L&K Coffee Co.'s
5 withdrawal of its Kona products from the market has had no measurable impact on the price of
6 Kona coffee, thereby disproving the allegation that L&K Coffee Co.'s sale of its Kona coffee
7 "artificially depressed" the price of Kona coffee. Even if the allegations in this paragraph were
8 true, KIHNKE would not be responsible factually or legally for the effect, if any, that any seller of
9 Kona products has had on the price of Kona coffee. Not only is there no joint liability among
10 defendants in this case, there is also an unlawful misjoinder of the parties.

11
12 4. Plaintiffs bring this action to obtain redress for all Kona coffee growers who have
13 been similarly injured by the conduct of the Defendants. Plaintiffs seek to recover for the members
14 of the Class all damages available under the Lanham Act, including compensation for lost profits,
15 disgorgement of profits of the Defendants, corrective advertising damages, and statutory attorneys'
16 fees and costs. Plaintiffs also seek equitable relief in the form of an injunction permanently
17 prohibiting the Defendants responsible for producing the accused coffee products from marketing,
18 selling, or distributing any coffee products labeled Kona. Plaintiffs further seek an injunction
19 prohibiting the retail Defendants from selling any coffee products that falsely designate Kona as
20 the source of origin of the coffee.

21 **ANSWER:** KIHNKE admits that Plaintiffs claim that they seek to recover all alleged
22 damages available under the Lanham Act for the purported members of the Class. L&K Coffee
23 Co. does not sell any of the products described in this complaint and has not sold any since 2019.
24 KIHNKE denies that the Plaintiffs are entitled to the relief they seek, and denies the remaining
25 allegations in Paragraph 4.

II. PARTIES

5. Plaintiff Bruce Corker is an individual who throughout the class period described in this Complaint has done business under the name of “Rancho Aloha,” growing, harvesting, and roasting Kona coffee within the Kona District. Mr. Corker sells his Kona coffee under the “Rancho Aloha” label to consumers around the world through his website, www.ranchoaloha.com.

ANSWER: KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph 5, and therefore denies the same.

6. Plaintiffs Colehour and Melanie Bondera are a married couple who throughout the class period described in this Complaint have done business under the name of “Kanalani Ohana Farm,” growing, harvesting, and roasting Kona coffee within the Kona District. The Bonderas sell their Kona coffee under the “Kanalani Ohana Farm” label to consumers around the world through their website, www.kanalaniohana.farm.

ANSWER: KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph 6, and therefore denies the same.

7. Plaintiffs Robert and Cecelia Smith are a married couple who conducted business under the name of “Smithfarms,” growing, harvesting, and roasting Kona coffee for decades within the Kona District until approximately June 17, 2015 when they formed Smithfarms, LLC. Plaintiff Smithfarms, LLC (“Smithfarms”) is a Hawaii limited liability company registered on or about June 17, 2015 with its principal place of business in Honaunau, Hawaii. Since registration, Smithfarms has grown, harvested, and roasted Kona coffee within the Kona District. Smithfarms’ sole member is “The Robert H. Smith Revocable Trust” for which Plaintiff Robert Smith is the grantor and sole trustee. Smithfarms is governed by its two managers, Robert and Cecelia Smith (the “Smiths”), a married couple. Smithfarms and the Smiths sell or sold their Kona coffee under the “Smithfarms” label to consumers around the world through the website, www.smithfarms.com, throughout the class period described in the Complaint.

1 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
2 Paragraph 7, and therefore denies the same.

3
4 8. On information and belief, defendant HAWAIIAN ISLES KONA COFFEE LTD.,
5 LLC (“Hawaiian Isles”), is a Hawaii limited liability company with its principal place of business
6 in Honolulu, Hawaii. Hawaiian Isles sells a variety of coffee products throughout the United
7 States, including this Judicial District, through various retail outlets, including but not limited to
8 Cost Plus World Market, Kroger, Safeway, Albertsons, ABC Stores, Amazon, and Walmart.
9 Hawaiian Isles falsely designates the geographic origin of its “Kona” coffee products with the
10 prominent placement of KONA on the front of the packaging. Hawaiian Isles advertises its coffee
11 products nationally on the Internet and with digital marketing campaigns through social media
12 sites such as Facebook.

13 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
14 Paragraph 8, and therefore denies the same.

15
16 9. On information and belief, defendant COST PLUS/WORLD MARKET (“World
17 Market”) is a retail chain with 276 stores across the United States including 11 stores located in
18 this Judicial District. World Market, with its headquarters in Alameda, California, is a wholly
19 owned subsidiary of BED, BATH & BEYOND INC., a New York corporation. Through its retail
20 locations and its own online store, www.worldmarket.com, World Market sells in this Judicial
21 District and throughout the United States both its own private-label Kona coffee products as well
22 as Kona coffee products offered by third parties. World Market falsely designates the geographic
23 origin of its “Kona” coffee products with the prominent placement of KONA on the front of the
24 packaging. Certain third-party coffee products that World Market sells, such as those from
25 Hawaiian Isles, similarly feature on the label the false designation of KONA as the geographic
26 origin of the coffee.

1 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
2 Paragraph 9, and therefore denies the same.

3
4 10. On information and belief, BCC ASSETS, LLC d/b/a BOYER'S COFFEE
5 COMPANY, INC. ("Boyer's") is a Colorado corporation with its principal place of business in
6 Denver, Colorado. Boyer's is a wholly owned subsidiary of Luna Gourmet Coffee and Tea
7 Company, LLC, which is a Colorado limited liability company also based in Denver, Colorado.
8 Boyer's sells its coffee products in this Judicial District and throughout the United States through
9 its online store at www.boyerscoffee.com as well as through national retailers including but not
10 limited to Amazon, Walmart, and Safeway. Boyer's falsely designates the geographic origin of its
11 "Kona" coffee products with the prominent placement of KONA on the packaging.

12 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
13 Paragraph 10, and therefore denies the same.

14
15 11. On information and belief, defendant L&K COFFEE CO. LLC ("L&K") is a
16 Michigan limited liability company with its principal place of business at Nunica, Michigan. L&K
17 primarily does business under the name Magnum Coffee Roastery, under which it sells a variety
18 of coffee products under its Magnum Exotics label. L&K sells its coffee products throughout the
19 United States, including this Judicial District, through both its own online store,
20 www.javaboulevard.com, and various retail outlets, including but not limited to Costco, Amazon,
21 Walmart, T.J. Maxx and Marshalls. L&K falsely designates the geographic origin of its "Kona"
22 coffee products with the prominent placement of KONA on the front of the packaging.

23 **ANSWER:** KIHNKE admits that L&K is a Michigan limited liability company with its
24 principal place of business in Nunica, admits that L&K primarily does business under the name
25 Magnum Coffee Roastery, and that it sells a variety of coffee products under a Magnum Exotics
26 label. Defendant admits that L&K sells and/or has sold coffee products throughout the United
27 States, including very limited amounts in this Judicial District, through both its own online store,

1 www.javaboulevard.com, and various retail outlets. L&K does not sell any of the products
2 described in this complaint and has not sold any since 2019. L&K has never sold Kona coffee
3 products in the state of Hawaii. KIHNKE denies the remaining allegations.

4
5 12. On information and belief, KEVIN KIHNKE (“Kihnke”) is an individual that
6 resides in Grand Rapids, Michigan. Kihnke is owner and president of L&K and is the primary
7 decision-maker for the package design of L&K’s coffee products, including coffee products that
8 have been falsely designated as originating from “Kona.” Kihnke is also solely responsible for
9 determining the percentage of Kona coffee included in L&K’s “Kona” coffee products.

10 **ANSWER:** Kihnke admits he is L&K’s president and owner. Defendant denies the
11 remaining allegations of Paragraph 12. Kihnke denies that he is liable in any manner in this
12 lawsuit. Kihnke denies that he is an appropriate defendant herein. L&K does not sell any of the
13 products described in this complaint and has not sold any since 2019.

14
15 13. On information and belief, defendant MULVADI CORPORATION is a Hawaii
16 corporation with its principal place of business in Honolulu, Hawaii. Mulvadi sells a variety of
17 coffee products throughout the United States, including this Judicial District, through various retail
18 outlets, including but not limited to ABC Stores, Amazon, and Walmart. Mulvadi falsely
19 designates the geographic origin of its “Kona” coffee products with the prominent placement of
20 KONA on the front of the packaging.

21 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
22 Paragraph 13, and therefore denies the same.

23
24 14. On information and belief, defendant COPPER MOON COFFEE, LLC (“Copper
25 Moon”) is an Indiana limited liability company with its principal place of business in East
26 Lafayette, Indiana. Copper Moon sells a variety of coffee products in this Judicial District and
27 throughout the United States, including this Judicial District, both through its webpage,

1 www.coppermooncoffee.com, and through various retail outlets, including but not limited to
2 Copper Moon Coffee Cafes, Amazon, Walmart, Sam's Club, Bed Bath & Beyond (the parent
3 company of World Market), Office Depot, and Staples. Copper Moon falsely designates the
4 geographic origin of its "Kona" coffee products with the prominent placement of KONA on the
5 front of the packaging.

6 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
7 Paragraph 14, and therefore denies the same.

8
9 15. On information and belief, defendant GOLD COFFEE ROASTERS, INC., dba
10 Hawaiian Gold and also Parry Estates ("Hawaiian Gold"), is a Delaware corporation with its
11 principal place of business in Jupiter, Florida. Hawaiian Gold sells a variety of coffee products
12 throughout the United States, including this Judicial District, through its own website and various
13 retail outlets, including but not limited to Kroger, Amazon, Walmart, T.J. Maxx and Marshalls.
14 Hawaiian Gold falsely designates the geographic origin of its "Kona" coffee products with the
15 prominent placement of KONA on the front of the packaging.

16 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
17 Paragraph 15, and therefore denies the same.

18
19 16. On information and belief, CAMERON'S COFFEE AND DISTRIBUTION
20 COMPANY ("DEFENDANT") is a Minnesota corporation with its principal place of business in
21 Shakopee, Minnesota throughout the United States through its online store at
22 www.cameronscoffee.com as well as through national retailers including but not limited to
23 Amazon, Walmart, Target, Sprouts, and Safeway. DEFENDANT falsely designates the
24 geographic origin of its "Kona" coffee products with the prominent placement of KONA on the
25 packaging.

26 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
27 Paragraph 16, and therefore denies the same.

1
2 17. On information and belief, defendant PACIFIC COFFEE, INC., which does
3 business as Maui Coffee Company (“MCC”), is a Hawaii corporation with its principal place of
4 business in Lahaina, Hawaii. MCC sells a variety of coffee products throughout the United States,
5 including this Judicial District, both through its webpage, www.mauicoffeeco.com, and through
6 various retail outlets, including but not limited to ABC Stores, Amazon, Walmart, and Target.
7 MCC falsely designates the geographic origin of its “Kona” coffee products with the prominent
8 placement of 100% KONA on the front of the packaging.

9 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
10 Paragraph 17, and therefore denies the same.

11
12 18. On information and belief, defendant THE KROGER CO. (“Kroger”) is an Ohio
13 Corporation, with its principal place of business in Cincinnati, Ohio. Kroger is a retail chain with
14 over 2,700 stores across the United States, including approximately 119 stores located in this
15 Judicial District. Kroger also does business as Fred Meyer and QFC. With its private label “Kivu,”
16 Kroger falsely designates the geographic origin of its “Kona” coffee products with the prominent
17 placement of KONA on the label of both its pre-packaged products and its self-serve coffee
18 dispensers. In addition, Kroger sells coffee products from Hawaiian Gold, and others, which also
19 falsely designates Kona as the geographic origin of its coffee.

20 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
21 Paragraph 18, and therefore denies the same. L&K has never sold Kroger any of the products
22 described in this complaint.

23
24 19. On information and belief, defendant AMAZON.COM, INC. (“Amazon”) is a
25 Delaware corporation with its principal place of business in Seattle, Washington. Amazon is the
26 largest online retailer in the world. Through its online store at www.amazon.com, Amazon sells in
27 this Judicial District and throughout the United States a variety of deceptive coffee products,

1 including, but not limited to, the following: Hawaiian Isles, Hawaii Gold, Mulvadi, Cameron's
2 Copper Moon, Boyer's, Hazz and Magnum Exotics. Each of these brands sells products that falsely
3 designate KONA as the origin of the coffee beans.

4 **ANSWER:** KIHNKE admits that Amazon has sold certain of L&K's products through its
5 online store. KIHNKE denies that the L&K coffee products sold by Amazon are deceptive, and
6 further denies that such products falsely designate KONA as the origin of the coffee beans. L&K
7 does not sell any of the products described in this complaint and has not sold any since 2019.
8 KIHNKE lacks sufficient information to admit or deny the remaining allegations in Paragraph 19,
9 and therefore denies the same.

10
11 20. On information and belief, defendant WALMART INC. ("Walmart") is a
12 corporation organized and existing under the laws of the State of Delaware with its principal place
13 of business in Bentonville, Arkansas. Walmart has a total of 5,358 stores nationwide, and
14 approximately 67 stores in Washington. Walmart sells in this Judicial District and throughout the
15 United States a variety of deceptive coffee products, including but not limited to the following:
16 MCC, Mulvadi, Copper Moon, Cameron's, Hawaiian Gold, Boyer's, and Hawaiian Isles. Each of
17 these brands sells products that falsely designate KONA as the origin of the coffee beans.

18 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the remaining
19 allegations in Paragraph 20, and therefore denies the same.

20
21 21. On information and belief, defendant COSTCO WHOLESALE CORPORATION
22 ("Costco") is a corporation organized and existing under the laws of the State of Washington with
23 its principal place of business in Issaquah, Washington. Costco is the second largest retailer in the
24 world, and it owns and operates numerous retail locations within this Judicial District. Through its
25 retail and online stores, Costco sells in this Judicial District and throughout the United States
26 deceptive coffee products such as Magnum Exotics, which falsely designates KONA as the origin
27 of the coffee beans.

1 **ANSWER:** KIHNKE admits that Costco sold certain of L&K's coffee products. KIHNKE
2 denies that the L&K coffee products sold by Costco are deceptive, and further denies that such
3 products falsely designate KONA as the origin of the coffee beans. L&K does not sell any of the
4 products described in this complaint and has not sold any since 2019. KIHNKE lacks sufficient
5 information to admit or deny the remaining allegations in Paragraph 21, and therefore denies the
6 same.

7
8 22. On information and belief, defendant BED BATH & BEYOND INC. ("Bed Bath"),
9 is a New York corporation with its headquarters in Union, NJ. Bed Bath operates over 1000 retail
10 locations across the country, including numerous retail locations within this Judicial District. Bed
11 Bath is the parent company of defendant World Market. Through its retail locations and its own
12 online store, Bed Bath sells in this Judicial District and throughout the United States various coffee
13 products labeled "Kona" from brands including, but not limited to, Copper Moon. The Copper
14 Moon coffee products sold by Bed Bath feature on the label the false designation of KONA as the
15 geographic origin of the coffee.

16 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
17 Paragraph 22, and therefore denies the same.

18
19 23. On information and belief, defendant ALBERTSONS COMPANIES INC.
20 ("Albertsons") is a Delaware corporation with its principal place of business in Boise, Idaho.
21 Albertsons is a national grocery store chain with over 2,300 locations across the United States,
22 including approximately 20 stores in this Judicial District. Albertsons is the parent company of
23 Safeway, Inc. Through its grocery stores in this Judicial District and throughout the United States,
24 Albertsons sells a variety of deceptive coffee products, including but not limited to Hawaiian Isles,
25 which falsely designates KONA as the origin of the coffee beans.

26 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
27 Paragraph 23, and therefore denies the same.

1
2 24. On information and belief, defendant SAFEWAY INC. (“Safeway”) is a Delaware
3 corporation with its principal place of business in Pleasanton, CA. Safeway is a national grocery
4 store chain with over 900 locations across the United States, including dozens of stores in this
5 Judicial District. Safeway is a subsidiary of Albertsons. Through its grocery stores in this Judicial
6 District and throughout the United States, Safeway sells a variety of deceptive coffee products,
7 including but not limited to Hawaiian Isles, which falsely designates KONA as the origin of the
8 coffee beans.

9 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
10 Paragraph 24, and therefore denies the same.
11

12 25. On information and belief, defendant MNS LTD. is a Hawaii corporation with its
13 principal place of business located at Honolulu, Hawaii. Under the tradename ABC Stores, MNS
14 Ltd. (hereinafter “ABC”) owns and operates a chain of retail stores through which it sells a variety
15 of coffee products labeled as “Kona.” ABC also sells in this Judicial District and throughout the
16 United States coffee products labeled as “Kona” through its online store at www.abcstores.com.
17 Some of the coffee products sold by ABC falsely designate KONA as the origin of the coffee
18 beans. Those offending brands include but are not limited to Mulvadi, MCC, and Hawaiian Isles.

19 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
20 Paragraph 25, and therefore denies the same.
21

22 26. On information and belief, defendant THE TJX COMPANIES (“TJX”) is a
23 Delaware corporation with its principal place of business in Framingham, Massachusetts. TJX
24 Companies, Inc. does business in Washington and elsewhere as T.J. Maxx. TJX operates a chain
25 of T.J. Maxx retail stores in the United States, with numerous locations in this Judicial District,
26 through which it sells a variety of coffee products labeled as “Kona.” TJX touts itself as one of the
27 largest off-price retailers in the country. Some of the coffee products sold by TJX falsely designate

1 KONA as the origin of the coffee beans. Those offending brands include, but are not limited to,
2 Hawaiian Gold, Magnum Exotics, and Kona Roasting Co.

3 **ANSWER:** KIHNKE admits that TJX has sold certain of L&K's coffee products.
4 KIHNKE denies that the L&K coffee products sold by TJX are deceptive, and further denies that
5 such products falsely designate KONA as the origin of the coffee beans. L&K does not sell any
6 of the products described in this complaint and has not sold any since 2019. KIHNKE lacks
7 sufficient information to admit or deny the remaining allegations in Paragraph 26, and therefore
8 denies the same.

9
10 27. On information and belief, defendant MARSHALLS OF MA, INC. ("Marshalls of
11 MA") is a Massachusetts corporation with its principal place of business in Framingham,
12 Massachusetts. Marshalls of MA does business in Washington and elsewhere as Marshalls.
13 Marshalls of MA operates a chain of Marshalls retail stores in the United States, with numerous
14 locations in this Judicial District, through which it sells a variety of coffee products labeled as
15 "Kona." Marshalls of MA touts itself as one of the largest off-price retailers in the country. Some
16 of the coffee products sold by Marshalls falsely designate KONA as the origin of the coffee beans.
17 Those offending brands include, but are not limited to, Hawaiian Gold, Magnum Exotics, and
18 Kona Roasting Co.

19 **ANSWER:** KIHNKE admits that Marshalls of MA has sold certain of L&K's coffee
20 products. KIHNKE denies that the L&K coffee products sold by Marshalls of MA are deceptive,
21 and further denies that such products falsely designate KONA as the origin of the coffee beans.
22 KIHNKE lacks sufficient information to admit or deny the remaining allegations in Paragraph 27,
23 and therefore denies the same.

24
25 28. On information and belief, defendant SPROUTS FARMERS MARKET, INC.
26 ("Sprouts") is a Delaware corporation with its principal place of business in Phoenix, Arizona.
27 Sprouts operates over 200 grocery stores across the United States, including multiple locations

1 within this Judicial District. Some of the coffee products sold by Sprouts falsely designate KONA
2 as the origin of the coffee beans. Those offending brands include, but are not limited to, Cameron's.

3 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
4 Paragraph 28, and therefore denies the same.

5
6 **III. JURISDICTION AND VENUE**

7 29. This action arises under 15 U.S.C. §1125(a). This Court has original subject matter
8 jurisdiction over Plaintiffs' claims for Lanham Act violations under 15 U.S.C. §1121(a) and
9 federal question jurisdiction under 28 U.S.C. §§1331.

10 **ANSWER:** KIHNKE admits that Federal Courts have original subject matter jurisdiction
11 over alleged Lanham Act violations under 15 U.S.C. §1121(a) and that they exert federal question
12 jurisdiction under 28 U.S.C. §§1331. KIHNKE denies that this specific Court properly has
13 jurisdiction over all of the claims this lawsuit and therefore denies the remaining allegations in
14 Paragraph 29.

15
16 30. The Defendants conduct business in this Judicial District, have sold products in this
17 Judicial District falsely designating "Kona" as the origin of the coffee, and have injured the
18 reputation of Kona and the farmers of authentic Kona coffee in this Judicial District. Defendant
19 Amazon, which sells many of the other defendants' deceptive "Kona" products, has its principal
20 place of business in this Judicial District. Defendant Costco also has its principal place of business,
21 and numerous retail locations, in this Judicial District. Amazon and Costco are two of the highest-
22 volume retailers in the world. All of the defendants who produce the deceptive "Kona" products
23 identified in this complaint sell such products in this Judicial District, either through numerous
24 physical retail locations (including but not limited to retailers who are also defendants in this
25 litigation) or through online stores (again including but not limited to retailers who are also
26 defendants in this litigation). Many of the defendants who manufacture the deceptive "Kona"
27 products named in this complaint also sell, through their own online stores, such product directly

1 to consumers in this Judicial District. All of the retail defendants who sell the deceptive “Kona”
2 products identified in this complaint either operate multiple retail locations in this Judicial District,
3 or they sell the accused products through an online store and then ship the accused products to
4 consumers in this Judicial District. The prevalence of the sale and distribution of the deceptive
5 “Kona” products in this Judicial District has harmed the reputation and goodwill associated with
6 the Kona origin for coffee and has impaired the Plaintiffs’ ability to obtain a fair price for their
7 authentic Kona coffee, or otherwise compete, in this Judicial District. Each of the defendants has
8 committed acts of unfair competition and false advertising in this Judicial District in violation of
9 the Lanham Act.

10 **ANSWER:** KIHNKE admits that L&K conducts very limited business in this district; that
11 unsubstantial amounts of L&K Kona coffee products were sold in this district; and admits that
12 L&K sells some very limited L&K coffee products, which are available to consumers in this
13 Judicial District. KIHNKE denies that this specific Court properly has jurisdiction over this
14 lawsuit. KIHNKE denies that L&K’s products falsely designate “Kona” as the origin of its coffee;
15 denies that L&K has injured the reputation of Kona and the farmers of “authentic” Kona coffee as
16 Plaintiffs have used that term; denies that L&K manufactures deceptive ‘Kona’ products; denies
17 that the sale and distribution of the allegedly deceptive “Kona” products in this Judicial District
18 has harmed the reputation and goodwill associated with the Kona origin for coffee and has
19 impaired the Plaintiffs’ ability to obtain a fair price for their allegedly authentic Kona coffee, or
20 otherwise compete, in this Judicial District; and denies that L&K has committed acts of unfair
21 competition and false advertising in this Judicial District in violation of the Lanham Act. L&K
22 does not sell any of the products described in this complaint and has not sold any since 2019.
23 KIHNKE lacks sufficient information to admit or deny the remaining allegations in Paragraph 30,
24 and therefore denies the same. L&K is a Michigan company that does very limited business in this
25 district and plaintiffs are coffee farmers who reside and do most if not all of their business within
26 the State of Hawaii. KIHNKE resides in Florida and has no contacts with this forum.

31. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to the claims occurred in this Judicial District.

ANSWER: KIHNKE admits that L&K conducts limited, inconsequential business in this district; that L&K's coffee products are sold in this district; and admits that L&K sells some limited L&K coffee products, which are available to consumers in this Judicial District. KIHNKE denies that L&K's products falsely designate "Kona" as the origin of its coffee; denies that L&K has injured the reputation of Kona and the farmers of "authentic" Kona coffee as Plaintiffs have used that term; denies that L&K manufactures deceptive 'Kona' products; denies that the sale and distribution of the allegedly deceptive "Kona" products in this Judicial District has harmed the reputation and goodwill associated with the Kona origin for coffee and has impaired the Plaintiffs' ability to obtain a fair price for their allegedly authentic Kona coffee, or otherwise compete, in this Judicial District; and denies that L&K has committed acts of unfair competition and false advertising in this Judicial District in violation of the Lanham Act. L&K does not sell any of the products described in this complaint and has not sold any since 2019. KIHNKE lacks sufficient information to admit or deny the remaining allegations in Paragraph 30, and therefore denies the same. KIHNKE denies that venue is proper in this Court as L&K is a Michigan company that does limited business in this district and plaintiffs are coffee farmers who reside and do most if not all of their business within the State of Hawaii. KIHNKE resides in Florida and has no contacts with this forum. KIHNKE therefore denied that this Court is the proper venue as to claims against KIHNKE herein.

IV. CLASS ACTION ALLEGATIONS

32. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated under Federal Rule of Civil Procedure 23. In particular, they seek to represent a Class of:

All persons and entities who commercially farmed Kona coffee in the Kona District and then sold their Kona coffee, provided that they farmed and sold their Kona coffee during the time that any Defendant sold coffee product with the false designation of Kona as the origin of the coffee product.

1 Plaintiffs also seek to represent 19 Defendant-Specific Subclasses:

2 All persons and entities who commercially farmed Kona coffee in the
3 Kona District and then sold their Kona coffee, provided that they
4 farmed and sold their Kona coffee during the time [Defendant] sold
coffee product with the false designation of Kona as the origin of the
coffee product.

5 Excluded from both the Class and the Subclasses are any entities named as Defendants in this
6 action.

7 **ANSWER:** KIHNKE admits that Plaintiffs purport to bring a class action, but denies that
8 the Court should certify the proposed class and denies the remaining allegations of Paragraph 32.
9 KIHNKE specifically denies that class certification is appropriate or warranted here.

10
11 33. Plaintiffs meet the prerequisites of Rule 23(a):

12 a. **Numerosity**. On information and belief, between 600 and 1,000 sole
13 entities grow Kona coffee. The members of the Class and each Subclass are thus so numerous that
14 joinder of all Class members in this action is not practical.

15 b. **Commonality**. The answers to questions common to the Class and
16 Subclasses will drive the resolution of this litigation. The common questions of law and fact
17 include:

18 i. whether Defendants manufactured or sold coffee labeled as
19 “Kona” that was not grown in the Kona District of Hawaii;

20 ii. whether Defendants’ distribution and sale of products falsely
21 labeled as “Kona” has created or is likely to create confusion among consumers;

22 iii. whether labeling coffee not grown in the Kona District of Hawaii
23 as “Kona” constitutes a violation of the Lanham Act;

24 iv. whether the Defendants’ Lanham Act violations have negatively
25 affected the market price of authentic Kona coffee;

26 v. whether the Defendants’ Lanham Act violations have injured the
27 goodwill and reputation of the Kona name;

vi. the extent of damages to authentic Kona growers;

vii. the extent of Defendants' profits earned as a result of falsely or misleadingly designating "Kona" as the origin of their coffee products;

viii. the corrective advertising required to remedy the damage Defendants have caused to the goodwill and reputation of the Kona name; and

ix. the form of injunction necessary to prevent Defendants from causing further harm in violation of the Lanham Act.

c. **Typicality**. Plaintiffs have the same interests as all members of the Class and Subclasses they seek to represent, and Plaintiffs' claims arise out of the same set of facts and conduct as all other members of the Class and Subclasses. Plaintiffs and all proposed Class members grew and sold authentic Kona coffee and competed against the growers and sellers of coffee falsely labeled as "Kona." All of the claims of Plaintiffs and proposed Class members arise out of Defendants' conduct in manufacturing, marketing, and selling coffee falsely labeled as "Kona."

d. **Adequacy**. Plaintiffs will fairly and adequately represent and protect the interests of the proposed Class members. Plaintiffs' interests align with those of the class members, and Plaintiffs have no fundamental conflicts with the Class. Plaintiffs have retained counsel competent and experienced in Lanham Act, complex commercial, and class action litigation who will fairly and adequately represent the Class.

ANSWER: Plaintiffs' allegations in Paragraph 32 (a) through (d) are legal conclusions not requiring a response. To the extent a response is required, KIHNKE denies these allegations. KIHNKE specifically denies that class certification is appropriate or warranted here.

34. Plaintiffs meet the prerequisites of Rule 23(b)(2) because Defendants have acted and refused to act on grounds that apply generally to the Class, such that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole. Defendants' sale

1 of coffee mislabeled as “Kona” coffee affected each Plaintiff and Class member in the same way.
2 And the Lanham Act provides for injunctive relief to prevent the Defendants from continuing to
3 sell coffee mislabeled as “Kona” coffee to prevent further harm to each Plaintiff and Class member.

4 **ANSWER:** The allegations in Paragraph 33 are legal conclusions not requiring a response.
5 To the extent that a response is required, KIHNKE denies these allegations, and specifically
6 identifies the allegation that KIHNKE “has affected each Plaintiff and class member *in the same*
7 *way*” as false. Many of the purported class members identify *this lawsuit* as harming them, and
8 not the conduct of defendants, as alleged herein. L&K does not sell any of the products described
9 in this complaint and has not sold any since 2019. KIHNKE specifically denies that class
10 certification is appropriate or warranted here.

11
12 35. Plaintiffs meet the prerequisites of Rule 23(b)(3):

13 a. The common questions of law and fact enumerated above predominate over
14 any questions affecting only individual members of the Class, and a class action is superior to other
15 methods for the fair and efficient adjudication of this controversy, as joinder of all members is
16 impracticable.

17 b. Defendants are sophisticated parties with substantial resources, while
18 proposed Class members generally are not, and prosecution of this litigation is likely to be
19 expensive, as proved by the extensive scientific analysis that preceded the filing of this complaint.
20 Because the economic damages suffered by any individual Class member from any individual
21 defendant may be relatively modest compared to the expense and burden of individual litigation,
22 it would be impracticable for proposed Class members to seek redress individually for Defendants’
23 wrongful conduct.

24 **ANSWER:** The allegations in Paragraph 35 (a) and (b) are legal conclusions not requiring
25 a response. To the extent that a response is required, KIHNKE denies these allegations. KIHNKE
26 specifically denies that class certification is appropriate or warranted here. Further, Plaintiff Bruce
27 Corker is a former partner and governor of the Seattle based law firm, Perkins Coie, which

1 represents some of the largest corporations in the world, including Boeing and Microsoft. Even if
 2 Corker lacked the resources to commence the “investigation” described in this paragraph, Corker
 3 at all times possessed the sophistication and legal acumen to understand his rights as alleged herein,
 4 and to retain counsel with the financial wherewithal to conduct that “investigation.” Thus, the
 5 allegation that plaintiffs lacked the sophistication and resources to timely commence the
 6 “investigation” they say was required to commence this lawsuit is false.

8 **V. STATUTES OF LIMITATIONS TOLLING**

9 36. **Discovery Rule.** Plaintiffs and Class members did not know and could not have
 10 known about their Lanham Act causes of action because, even assuming general awareness of the
 11 sales of fake Kona coffee, it is impossible to know that a particular defendant has sold such coffee
 12 without either (1) extensive and expensive chemical analysis of the coffee itself that very few
 13 laboratories can perform and which Plaintiffs and the Class members likely cannot afford to pay
 14 for on their own, or (2) documents and information in the exclusive possession of the defendant.
 15 Reasonable and diligent investigation did not and could not reveal a factual basis for the Lanham
 16 Act claims alleged in this complaint prior to the investigation and extensive scientific testing that
 17 led to the Complaint itself.

18 **ANSWER:** KIHNKE denies that Plaintiffs did not know, and could not have known, about
 19 their Lanham Act causes of action. Plaintiffs have admitted that the “scientific testing” was
 20 available to them more than five years before they filed their complaint. KIHNKE denies the
 21 remaining allegations in Paragraph 36. Further, Plaintiff Bruce Corker is a former partner and
 22 governor of the Seattle based law firm, Perkins Coie, which represents some of the largest
 23 corporations in the world, including Boeing and Microsoft. Even if Corker lacked the resources
 24 to commence the “investigation” described in this paragraph, Corker at all times possessed the
 25 sophistication and legal acumen to understand his rights as alleged herein, and to retain counsel
 26 with the financial wherewithal to conduct that “investigation.” Thus, the allegation that plaintiffs
 27 lacked the sophistication and resources to timely commence the “investigation” they say was

1 required to commence this lawsuit is false. KIHNKE denies that a “Discovery Rule” is available
2 to plaintiffs in this action under both law and fact.

3
4 37. **Fraudulent Concealment.** Any applicable statutes of limitations have been tolled
5 by Defendants’ knowing, active, and ongoing concealment of the facts as alleged in this
6 Complaint. Defendants falsely labeled their coffee as “Kona” with the intent that other participants
7 in the market, including Plaintiffs, Class members, and consumers, would be unable to determine
8 whether or not the coffee was authentic Kona coffee. The truth about the origin of the coffee
9 contained in Defendants’ products was information within Defendants’ exclusive control. The
10 Defendants’ had actual knowledge of their acts of concealment. Under the Lanham Act,
11 Defendants owed and owe to Plaintiffs and Class members the duty to refrain from making false
12 designations of the origin of their products.

13 **ANSWER:** Plaintiffs’ allegation regarding KIHNKE’s duties under the Lanham Act is a
14 legal conclusion that does not require a response. To the extent a response is required, KIHNKE
15 denies this allegation. L&K does not sell any of the products described in this complaint and has
16 not sold any since 2019. KIHNKE denies the remainder of the allegations in Paragraph 37.
17 KIHNKE denies that a “Fraudulent Concealment” theory is available to plaintiffs in this action
18 under both law and fact.

19
20 38. **Estoppel.** Under the Lanham Act, Defendants owed and owe to Plaintiffs and Class
21 members the duty to refrain from making false designations of the origin of the coffee in their
22 coffee products. Defendants knowingly, affirmatively, and actively concealed the true character of
23 their coffee, and that concealment continues. Defendants know and take unfair advantage of the
24 market for authentic Kona coffee. Defendants are estopped from relying on any statute of
25 limitations or advancing any laches argument in defense of this action.

26 **ANSWER:** Plaintiffs’ allegation regarding KIHNKE duties under the Lanham Act is a
27 legal conclusion that does not require a response. To the extent a response is required, KIHNKE

denies this allegation. L&K does not sell any of the products described in this complaint and has not sold any since 2019. KIHNKE denies the remainder of the allegations in Paragraph 38. Further, Plaintiff Bruce Corker is a former partner and governor of the Seattle based law firm, Perkins Coie, which represents some of the largest corporations in the world, including Boeing and Microsoft. Even if Corker lacked the resources to commence the “investigation” described in this paragraph, Corker at all times possessed the sophistication and legal acumen to understand his rights as alleged herein, and to retain counsel with the financial wherewithal to conduct that “investigation.” Thus, the allegation that plaintiffs lacked the sophistication and resources to timely commence the “investigation” they say was required to commence this lawsuit is false. KIHNKE denies that an “Estoppel” theory is available to plaintiffs in this action under both law and fact.

VI. FACTUAL BACKGROUND

39. Kona coffee is one of the rarest and most prized coffees in the world. Kona coffee is grown in the Kona District on the Big Island of Hawaii (the “Kona District”). *See* map below. *See also* Hawaii Administrative Rules (“HAR”) §4-143-3 (defining the geographic region of Kona as the “North Kona and South Kona districts on the island of Hawaii, as designated by the State of



1 Hawaii Tax Map”). The Kona District contains only 3,800 acres of land cultivated for Kona coffee
2 production, which sharply limits the amount of Kona coffee that can be grown.

3 **ANSWER:** KIHNKE admits that coffee is grown in the Kona District on the Big Island of
4 Hawaii. KIHNKE lacks sufficient information to admit or deny the remaining allegations in
5 Paragraph 39, and therefore denies the same.

6
7 40. Only coffee grown in the Kona District can be sold as Kona coffee. Coffee grown
8 outside of the Kona District, even if grown within the state of Hawaii, cannot be sold as Kona
9 coffee.

10 **ANSWER:** The allegations in Paragraph 40 are legal conclusions not requiring a response.
11 To the extent a response is required, KIHNKE denies these allegations.

12
13 41. Kona coffee has been grown in the Kona District since 1828. The Kona District’s
14 volcanic soil, elevation, rainfall, proximity to the Pacific Ocean, moderate temperatures, and
15 sunshine all interact to create Kona coffee’s distinctive characteristics. Kona coffee’s unique
16 flavor, aroma, and mouth feel are a direct result of this growing environment.

17 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
18 Paragraph 41, and therefore denies the same. KIHNKE further denies the suggestion that Kona
19 coffee can be identified *by consumers* by a uniform or consistent flavor or “mouth feel,” or that all
20 Kona coffee tastes the same.

21
22 42. The Kona name tells consumers that they are buying coffee grown in the Kona
23 District. The name also tells consumers that the coffee has a distinctive flavor profile, and that the
24 beans are of the highest quality. Consequently, consumers have been willing to pay a premium for
25 Kona coffee.

26 **ANSWER:** KIHNKE denies that the Kona name tells consumers that they are buying
27 coffee grown in the Kona District, that the beans are of the highest quality, or that consumers are

1 willing to pay a premium for Kona coffee for this reason. KIHNKE is further unaware of any
2 consumers who purchase L&K's Magnum coffee for \$7 or \$8 per pound who have any interest in
3 paying \$35 to \$50 for a pound of *any* coffee. L&K does not sell any of the products described in
4 this complaint and has not sold any since 2019. KIHNKE lacks sufficient information to admit or
5 deny the remaining allegations in Paragraph 42, and therefore denies the same.

6
7 43. Within the Kona District, between 600 and 1,000 farmers grow Kona coffee beans.
8 The typical Kona farmer cultivates no more than five acres, which is a very small farming
9 operation. These farms typically operate as family businesses.

10 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
11 Paragraph 43, and therefore denies the same.

12
13 44. Kona farmers produce approximately 2.7 million pounds of green Kona coffee each
14 year. That compares to 20 billion pounds of green coffee produced worldwide. In other words,
15 authentic Kona represents approximately 0.01% of worldwide coffee production. It is truly a
16 premium product.

17 **ANSWER:** KIHNKE denies that the amount of Kona coffee produced each year causes
18 Kona coffee to be "truly a premium product." KIHNKE lacks sufficient information to admit or
19 deny the remaining allegations in Paragraph 44, and therefore denies the same.

20
21 45. But even though only 2.7 million pounds of authentic green Kona coffee is grown
22 annually, over 20 million pounds of coffee labeled as "Kona" is sold at retail. That is physically
23 impossible; someone is lying about the contents of their "Kona" products.

24 **ANSWER:** KIHNKE denies it is lying about the contents of its Kona labeled products.
25 KIHNKE also denies that over 20 million pounds of coffee labeled as "Kona" is sold at retail
26 because Plaintiff mischaracterizes use of the word "Kona" and includes within this category
27 products that are clearly Kona blends or other types of coffee products. L&K does not sell any of

1 the products described in this complaint and has not sold any since 2019. KIHNKE lacks sufficient
2 information to admit or deny the remaining allegations in Paragraph 45, and therefore denies the
3 same.

4
5 46. Defendants sell packaged coffee products that are presented to consumers as Kona
6 coffee, but that actually contain cheap commodity coffee beans. Some packages contain trace
7 amount of Kona coffee, while other packages contain no Kona coffee at all.

8 **ANSWER:** KIHNKE admits L&K and certain Defendants sell L&K's coffee. KIHNKE
9 denies that L&K is falsely labeling its coffee products. L&K does not sell any of the products
10 described in this complaint and has not sold any since 2019. KIHNKE lacks sufficient information
11 to admit or deny the allegations in Paragraph 45 as they pertain to other Defendants or other
12 products, and therefore denies the same. KIHNKE admits that its Kona blends sold between
13 February 2015 and February 2019 contain a percentage of Kona coffee, but denies that it sold any
14 of this product in the state of Hawaii. KIHNKE denies the remaining allegations in Paragraph 46.

15
16 47. The malicious actions taken by these Defendants, both individually and
17 collectively, cause significant harm to legitimate Kona farmers. First, the Defendants flood the
18 market with what appears to be Kona coffee. This tremendous supply of counterfeit Kona coffee
19 pushes prices down sharply. And that low pricing artificially restrains the profitability of legitimate
20 Kona coffee farms. Second, the Defendants are selling run-of-the-mill commodity coffee and
21 labeling it as Kona coffee. A consumer who tries that inferior product, thinking it is Kona coffee,
22 will conclude that Kona coffee is not worth a premium price. That consumer will be unwilling to
23 pay a premium price for Kona in the future.

24 **ANSWER:** KIHNKE denies the allegations in Paragraph 46 of the Complaint as they
25 pertain to L&K or certain retailer defendants' sale of L&K coffee products. The allegation that a
26 consumer who buys L&K's \$7 to \$8 per pound Magnum coffee will conclude Kona coffee is not
27 worth a premium price is a false allegation without any basis in fact, since it assumes, without any

1 basis in fact, that a consumer who buys Magnum’s coffee has any interest in buying *any* coffee
2 that retails for \$35 to \$50 per pound. L&K does not sell any of the products described in this
3 complaint and has not sold any since 2019. KIHNKE lacks sufficient information to admit or deny
4 the allegations in Paragraph 47 as they pertain to other Defendants or other products, and therefore
5 denies the same. KIHNKE denies the remaining allegations in Paragraph 47.

6
7 48. This pricing damage is not just theoretical; it is visible in the marketplace. Kona
8 coffee performs differently in the marketplace than similarly-situated specialty coffees. For
9 example, the specialty coffee called Jamaica Blue Mountain Coffee (“Blue Mountain”) is another
10 premium coffee with a specific geographic designation of origin. Blue Mountain is grown in an
11 annual volume that is comparable to Kona. And Blue Mountain is pushed into the same distribution
12 channels. Yet Blue Mountain sells for between two and five times the price per pound of Kona.

13 **ANSWER:** Whether Jamaica Blue Mountain Coffee is a “specialty” or “premium coffee”
14 is a statement of subjective opinion to which no response is required. To the extent a response is
15 required, KIHNKE denies that there is any damage to Kona coffee pricing (visible or otherwise)
16 in the marketplace, and further denies that Jamaica Blue Mountain coffee sells for two to five times
17 the price per pound of Kona coffee. Further, Jamaican Blue Mountain blends are also prevalent in
18 the marketplace, with one distinction that is critical here: unlike plaintiffs, certain Jamaican Blue
19 Mountain coffee farmers own and license the use of the Jamaican Blue Mountain name. In
20 contrast, KIHNKE is informed and believes that an administrative department of the State of
21 Hawaii has the rights to the Kona name. L&K does not sell any of the products described in this
22 complaint and has not sold any since 2019. L&K’s withdrawal of its Kona labelled products from
23 the marketplace has had no measurable impact on the price of Kona coffee. KIHNKE is not jointly
24 liable for the alleged conduct of all other defendants named in this lawsuit. KIHNKE lacks
25 sufficient information to admit or deny the remaining allegations in Paragraph 48, and therefore
26 denies the same.

1 49. The impact of lower Kona pricing on the Plaintiffs and the Class is significant.
2 Growing Kona coffee is a very expensive proposition, largely because the topography of the Kona
3 District makes it nearly impossible to use modern farming machinery. Kona farms are therefore
4 manual farming operations, with significant labor required to plant and harvest the coffee.

5 **ANSWER:** KIHNKE denies that there is a lower price of Kona coffee beans as the result
6 of L&K's use of the word Kona on its packaging. There is no joint liability among defendants
7 herein. L&K does not sell any of the products described in this complaint and has not sold any
8 since 2019. KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph
9 49, and therefore denies the same.

10
11 50. Despite the fact that they sell a premium product, the typical Kona coffee farmer,
12 who is forced to sell their Kona coffee at a depressed price due to the actions of the Defendants,
13 struggle to turn a significant profit from their Kona coffee farming operation. Sellers of premium
14 products with worldwide reputations typically enjoy above-market profit margins, reflecting the
15 desirability of the product. The fact that so many Kona farmers struggle is shocking.

16 **ANSWER:** KIHNKE denies that Plaintiffs sell a "premium product." KIHNKE lacks
17 sufficient information to admit or deny whether the typical Kona coffee farmer struggles to turn a
18 significant profit, and therefore denies that allegation. KIHNKE denies that his or L&K's conduct,
19 as alleged herein, has "depressed" Kona coffee prices. KIHNKE is not jointly responsible for the
20 alleged conduct of all other defendants. KIHNKE denies the remaining allegations in Paragraph
21 50.

22
23 51. Kona farmers have suspected bad actors in the Kona marketplace for years. The
24 problem has always been determining what was actually in a particular bag as that information has
25 been concealed from the Kona farmers. Modern chemistry can now provide answers to that
26 question.

1 **ANSWER:** KIHNKE admits that Plaintiffs have known of their claims for years and that
 2 their claims are barred by laches and/or the applicable statute of limitations. L&K does not sell
 3 any of the products described in this complaint and has not sold any since 2019. Plaintiffs have
 4 admitted that the “modern chemistry” was available to them more than five years before they filed
 5 their complaint. Further, Plaintiff Bruce Corker is a former partner and governor of the Seattle
 6 based law firm, Perkins Coie, which represents some of the largest corporations in the world,
 7 including Boeing and Microsoft. Even if Corker lacked the resources to commence the
 8 investigation referred to in this paragraph, Corker at all times possessed the sophistication and
 9 legal acumen to understand his rights as alleged herein, and to retain counsel with the financial
 10 wherewithal to conduct that investigation. KIHNKE denies the remaining allegations in Paragraph
 11 51.

12 13 **VII. ELEMENTAL TESTING OF COFFEE**

14 52. Kona coffee is grown in a very specific geographic area on the Big Island of Hawaii.
 15 That geographic area has a distinctive soil composition, due largely to its proximity to volcanoes.
 16 And that geographic area has distinctive humidity and rainfall, due largely to its proximity to the
 17 Pacific Ocean.

18 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
 19 Paragraph 52, and therefore denies the same.

20
 21 53. As a result of the local soil and rainfall, certain elements are present in high
 22 concentrations in Kona coffee beans. If a particular package of coffee truly contains Kona coffee
 23 beans, these elements tend to be present in high concentrations. If these elements are not present
 24 in high concentrations, then the package is unlikely to contain Kona coffee.

25 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
 26 Paragraph 53, and therefore denies the same.

1 54. Moreover, as a direct result of the local soil and rainfall, certain elements are **not**
2 present in high concentrations in Kona coffee beans. If a particular package of coffee truly contains
3 only Kona coffee beans, then these elements tend **not** to be present in high concentrations. If they
4 are present in high concentrations, then the package is unlikely to contain Kona coffee.

5 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
6 Paragraph 54, and therefore denies the same.

7
8 55. Scientists can examine the concentration of each of the elements that are found in
9 Kona coffee beans, as well as the concentration of each of the elements that are **not** found in Kona
10 coffee beans. By combining this information, scientists can determine with high confidence
11 whether a particular package is authentic Kona coffee.

12 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
13 Paragraph 55, and therefore denies the same.

14
15 56. In practice, instead of looking at the concentration of an isolated element like
16 barium (Ba) or nickel (Ni), scientists examine the ***ratio*** of the concentrations of ***pairs*** of elements.
17 The reason for this approach is simple. If you were to roast coffee beans for ten minutes longer,
18 you would not impact the amount of barium or nickel in the sample, but you would burn away
19 more of the overall coffee bean. The concentration of barium would therefore increase, since it is
20 defined as the mass of barium divided by the mass of the total bean. And the concentration of
21 nickel would therefore increase, since it is defined as the mass of nickel divided by the mass of the
22 total bean. But the ratio of the concentration of barium to the concentration of nickel would be
23 unchanged. And since the lab does not know how long particular coffee samples were roasted by
24 the Defendants, the scientists focus on measures that do not change with roasting.

25 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
26 Paragraph 56, and therefore denies the same.

57. Having tested barium and nickel, scientists have determined that authentic Kona coffee has a *ratio* of the concentration of barium to the concentration of nickel, also called the *relative concentration*, that falls within a certain range. If an unknown sample has a relative concentration within that range, it may or may not be Kona. But if an unknown sample has a relative concentration clearly outside that range, it is highly unlikely to be Kona. (This analysis makes intuitive sense. A veterinarian knows that dogs weigh between 1 and 325 pounds. If that veterinarian sees an animal that weighs 100 pounds, which is clearly in the range of observed dog weights, the veterinarian would say that the animal may or may not be a dog. But if that veterinarian sees an animal that weighs 500 pounds, which is well outside the range of previously-observed dog weights, the veterinarian would immediately note that the animal is highly unlikely to be a dog.

ANSWER: KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph 57, and therefore denies the same.

58. Determining the concentrations of particular elements and *isotopes* (which are simply variations of a particular element) is a process that requires significant scientific expertise and expensive instrumentation. The scientific techniques of *elemental analysis* and *isotopic analysis*¹ are widely accepted in the scientific community, and have been used in studies of various food products (including coffee). Unfortunately, these tests are very expensive. For that reason, the growers have never before had access to this kind of evidence.

ANSWER: Plaintiffs have admitted that “these tests” were available to them more than five years before they filed their complaint. Further, Plaintiff Bruce Corker is a former partner and governor of the Seattle based law firm, Perkins Coie, which represents some of the largest corporations in the world, including Boeing and Microsoft. Even if Corker lacked the resources to commence the investigation referred to in this paragraph, Corker at all times possessed the

¹ Two different types of isotopic testing have been performed to confirm whether a defendant has falsely designated Kona as the origin of its coffee products. The first test examined strontium isotopes, and the second test examined hydrogen and oxygen isotopes.

1 sophistication and legal acumen to understand his rights as alleged herein, and to retain counsel
2 with the financial wherewithal to conduct that investigation. KIHNKE lacks sufficient information
3 to admit or deny the allegations in Paragraph 58, and therefore denies the same.

4
5 59. It is important to recognize that Defendants (who are likely to protest any and all
6 aspects of scientific testing) could prove their innocence without retaining a single scientist, and
7 without conducting a single lab test. They could simply provide evidence of where they bought
8 legitimate Kona coffee that they have been selling at retail. Any legitimate Kona coffee products
9 must ultimately have been grown on a farm owned by a Plaintiff or prospective Class member.

10 **ANSWER:** KIHNKE or L&K has provided this “evidence” to plaintiffs. Further, there was
11 no need to sue KIHNKE or L&K to get it. When plaintiffs told L&K they objected to L&K’s use
12 of the word Kona on its packaging in February 2019, L&K not only ceased use of the word Kona
13 on its packaging, it stopped using Kona beans in its products. KIHNKE denies the remaining
14 allegations in Paragraph 59.

15
16 60. It is also important to recognize that Defendants are sophisticated participants in
17 the premium coffee marketplace. On information and belief, certain named defendants employ
18 professional coffee buyers whose job function is to source coffees for their products. In other
19 words, much like a professional jeweler could never plausibly claim to be confused about the
20 difference between a Rolex and a Timex, these sophisticated defendants cannot plausibly claim to
21 be confused about the coffee they are procuring. The Defendants and their buyers know exactly
22 what they are buying, and what they are selling.

23 **ANSWER:** The first sentence of Paragraph 60 is a statement of subjective opinion, not a
24 factual allegation capable of admission or denial. To the extent that a response is required,
25 KIHNKE denies that it is important to recognize whether or not the Defendants are sophisticated
26 participants in the premium coffee marketplace. KIHNKE admits that L&K has employees whose
27 job functions include sourcing coffee beans for its coffee products. Plaintiffs’ allegation that

1 Defendants cannot plausibly claim to be confused about the coffee they are procuring is a legal
2 conclusion not requiring a response. L&K does not sell any of the products described in this
3 complaint and has not sold any since 2019. KIHNKE lacks sufficient information to admit or deny
4 the allegations in Paragraph 60, and therefore denies the same.

5
6 **VIII. THE DEFENDANTS' PRODUCTS AND WRONGFUL ACTS**

7 61. Defendants use marketing and packaging that tell consumers that they are buying
8 packages of Kona coffee, but those packages do not contain Kona coffee.

9 **ANSWER:** KIHNKE denies the allegations in Paragraph 61 to the extent they pertain to
10 L&K coffee products. L&K does not sell any of the products described in this complaint and has
11 not sold any since 2019. KIHNKE lacks sufficient information to admit or deny the allegations in
12 Paragraph 61 to the extent they pertain to other Defendants, and therefore denies the same.

13
14 62. For each Defendant, this complaint includes one or more examples of particular
15 products in their product line. The examples provided in this complaint are intended to be
16 representative, and not necessarily exhaustive, of the deceptive products manufactured and/or sold
17 by each defendant. Sampling has shown that nearly every product labeled "Kona" in their product
18 lines misrepresents the origin of the coffee beans contained in the package. Given the scarcity of
19 authentic Kona coffee (remember that Kona coffee represents only 0.01% of the worldwide supply
20 of coffee) and the high profitability of marketing commodity coffee as if it were Kona coffee, it is
21 no surprise that any defendant that is willing to engage in such deceptive practices would
22 consistently practice their deception across all product lines. An unscrupulous merchant selling
23 counterfeit Rolex watches on a street corner tends not to mix a real Rolex into inventory every
24 once in a while.

25 **ANSWER:** KIHNKE admits that the Complaint includes certain images of coffee
26 products. KIHNKE denies that the sampling referenced in Paragraph 62 demonstrates that L&K
27 coffee products misrepresent the origin of the coffee beans contained therein, and further denies

1 that L&K coffee products are highly profitable. KIHNKE otherwise denies the matter stated in this
2 paragraph. L&K does not sell any of the products described in this complaint and has not sold any
3 since 2019. KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph 62
4 to the extent they pertain to other Defendants and other products, and therefore denies the same.

5
6 63. For each example product, this complaint includes two graphs that shed light on the
7 true contents of the package. The graphs are based on the ratios of elemental concentrations
8 discussed above. The graphs included in this complaint are only a subset of the data collected on
9 each deceptive product. For each product, additional data reinforces the results shown below.

10 **ANSWER:** KIHNKE denies that the graphs referenced in Paragraph 63 demonstrate that
11 the L&K coffee products do not contain Kona coffee beans. KIHNKE further denies that the graphs
12 are based on the ratios of elemental concentrations in L&K's coffee. L&K does not sell any of the
13 products described in this complaint and has not sold any since 2019. KIHNKE lacks sufficient
14 information to admit or deny the remaining allegations in Paragraph 63, and therefore denies the
15 same.

16
17 64. For any particular coffee sample, a scientist can calculate the ratio between the
18 concentration of strontium (Sr), and the concentration of zinc (Zn). For authentic Kona coffee, that
19 ratio falls within a narrow range. A scientist can similarly calculate the ratio between the
20 concentration of barium (Ba), and the concentration of nickel (Ni). For authentic Kona coffee, that
21 ratio also falls within a narrow range. Those two ratios can be plotted on a scatter plot, creating a
22 visual that indicates whether a particular sample has concentration ratios that are consistent with
23 Kona coffee. The blue dots in each scatter plot below show the observed ratios from over one
24 hundred samples of authentic Kona coffee. The red diamonds show the observed ratios from the
25 coffee products sold by Defendants. Those red diamonds are far outside the observed ranges for
26 Kona, indicating that the Defendants' designation of the origin of its coffee products as Kona is
27 false.

1 **ANSWER:** KIHNKE lacks sufficient knowledge to admit or deny what plaintiffs’ so-
2 called “scientists” did or discovered about L&K’s coffees, and therefore denies the allegations in
3 Paragraph 64. L&K does not sell any of the products described in this complaint and has not sold
4 any since 2019.

5
6 65. For any coffee sample, a scientist can also calculate the ratio between the
7 concentration of cobalt (Co), and the concentration of zinc (Zn). For authentic Kona, that ratio
8 falls within a narrow range. And a scientist can calculate the ratio between the concentration of
9 manganese (Mn), and the concentration of nickel (Ni). For authentic Kona, that ratio also falls
10 within a narrow range. As with the earlier ratios, those two ratios can be plotted on a scatter plot,
11 creating another visual that indicates whether a particular sample has concentration ratios that are
12 consistent with Kona coffee. The blue dots in each scatter plot below show the observed ratios
13 from over one hundred samples of authentic Kona coffee. The red diamonds show the observed
14 ratios from the coffee products sold by Defendants. Those red diamonds are far outside the
15 observed ranges for Kona, indicating that the Defendants’ designation of Kona as the origin of its
16 coffee products is false.

17 **ANSWER:** KIHNKE lacks sufficient knowledge to admit or deny what plaintiffs’ so-
18 called “scientists” did or discovered about L&K’s coffees, and therefore denies the allegations in
19 Paragraph 65. L&K does not sell any of the products described in this complaint and has not sold
20 any since 2019.

21
22 66. *PACIFIC COFFEE (“MAUI COFFEE COMPANY” OR “MCC”)*. The Maui
23 Coffee Company packages are unequivocal. The packages prominently say either “100% Kona
24 Coffee” or “100% Kona Macadamia Nut” in large block print on the front panel. Seeing that
25 packaging on a shelf or online, a consumer would conclude that the package contains no coffee
26 beans other than Kona coffee beans.

1 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
2 Paragraph 66, and therefore denies the same.

3
4 67. MCC falsely designates the geographic origin of its “Kona” coffee products with
5 the prominent placement of 100% KONA on the front of the packaging. MCC furthers this
6 deception through its product descriptions published on its online store. MCC deceptively
7 describes its “100% Kona Coffee” product as follows:

8 Without a doubt, one of the world’s most sought-after beans by coffee
9 connoisseurs! Taste the full rich flavor of 100% Kona Coffee and experience the
10 magic of the Kona Coast for yourself. Our 100% Pure Kona Coffee has a medium
11 to full body with mild acidity and will be delivered fresh to your doorstep. Take a
trip to the Kona Coast when you experience the full rich flavor of our 100% Pure
Kona Coffee.

12 MCC describes its “100% Kona Macadamia Nut” product as “Kona goodness with a touch of
13 island-grown macadamia nuts. It doesn’t get any more Hawaiian than that.” MCC also deceptively
14 advertises its coffee products as “100% Kona” on its Internet advertising. The deceptive product
15 descriptions are designed to mislead consumers into believing that MCC’s products contain coffee
16 from Hawaii, and more specifically the Kona region of Hawaii. The deceptive marketing, product
17 names, and package designs are all intended to trade off the reputation and goodwill of the Kona
18 name. They deliberately mislead the consumer into believing that MCC coffee products contain
19 nothing but premium Kona coffee beans in order to justify the high price MCC charges for what
20 are actually ordinary commodity coffee beans. Below are representative images of MCC’s
21 deceptive “Kona” coffee products.

1 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
 2 Paragraph 67, and therefore denies the same.

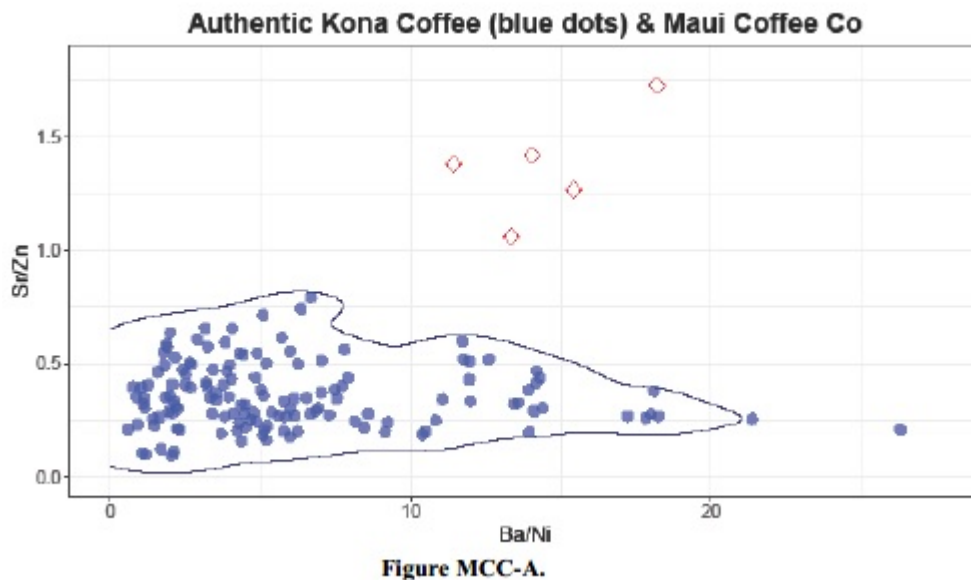


12 **Figure MCC-1**



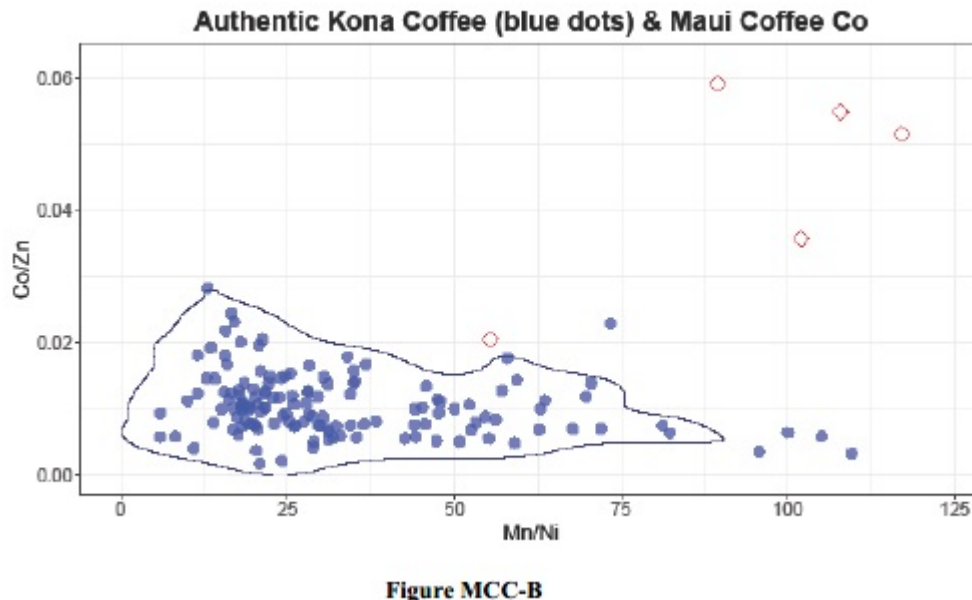
12 **Figure MCC-2**

14 68. But while consumers would reasonably believe that the packages in Figures MCC-
 15 1 and MCC-2 are pure Kona coffee, the lab tests tell a different story. On the below scatter plot
 16 showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked
 17 by red diamonds) are well outside the range of authentic Kona. In other words, MCC's designation
 18 of Kona as the origin of the coffee in these products is false.



ANSWER: KIHNIKE lacks sufficient information to admit or deny the allegations in Paragraph 68, and therefore denies the same.

69. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio reinforces the same conclusion for the MCC products that were tested. These accused MCC products (marked by red diamonds) are well outside the range of authentic Kona. In other words, MCC's designation of Kona as the origin of the coffee in these products is false.



1
2 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
3 Paragraph 69, and therefore denies the same.
4

5 70. **MULVADI CORPORATION.** The front of the Mulvadi package says “100% Kona
6 Coffee” in two distinct places. The main product banner is “Pure 100% Kona Coffee.” And there
7 is a misleading “Official Seal” that says “100% Kona Coffee.” The purpose of the language that
8 Mulvadi features on the face of its packaging is to mislead consumers into believing that Mulvadi
9 coffee products come from the Kona District.

10 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
11 Paragraph 70, and therefore denies the same.
12

13 71. Mulvadi deceptively places a gold sticker on its packaging, which it presents as the
14 “Official Seal” of the “Independent Kona Coffee Growers Association,” proclaiming that the
15 product is “100% Kona Coffee” from the “Big Island of Hawaii.” On information and belief, there
16 is no such association that is recognized for certifying Kona coffee products as 100% authentic.
17 Instead, the “seal” is a marketing ploy intended to deceive consumers as to the source of origin of
18 the coffee sold by Mulvadi. The deceptive marketing, product names, and package designs are all
19 intended to trade off the reputation and goodwill of the Kona name. They deliberately mislead the
20 consumer into believing that Mulvadi coffee products contain premium Kona coffee beans,
21 justifying the high price Mulvadi charges for what is actually ordinary commodity coffee. Below
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are representative images of Mulvadi's deceptive "Kona" coffee products, including an image of the "seal."



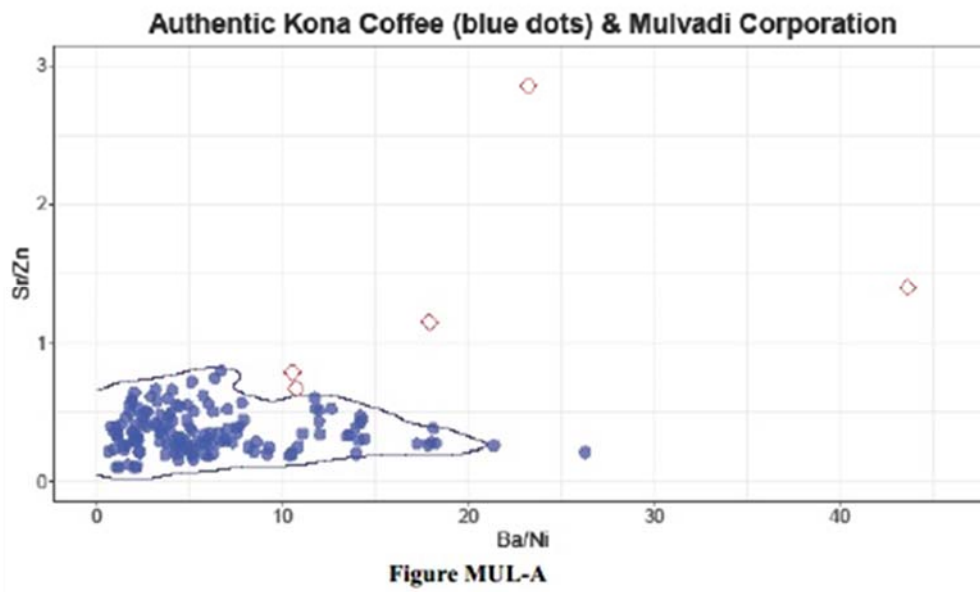
Figure MUL-1



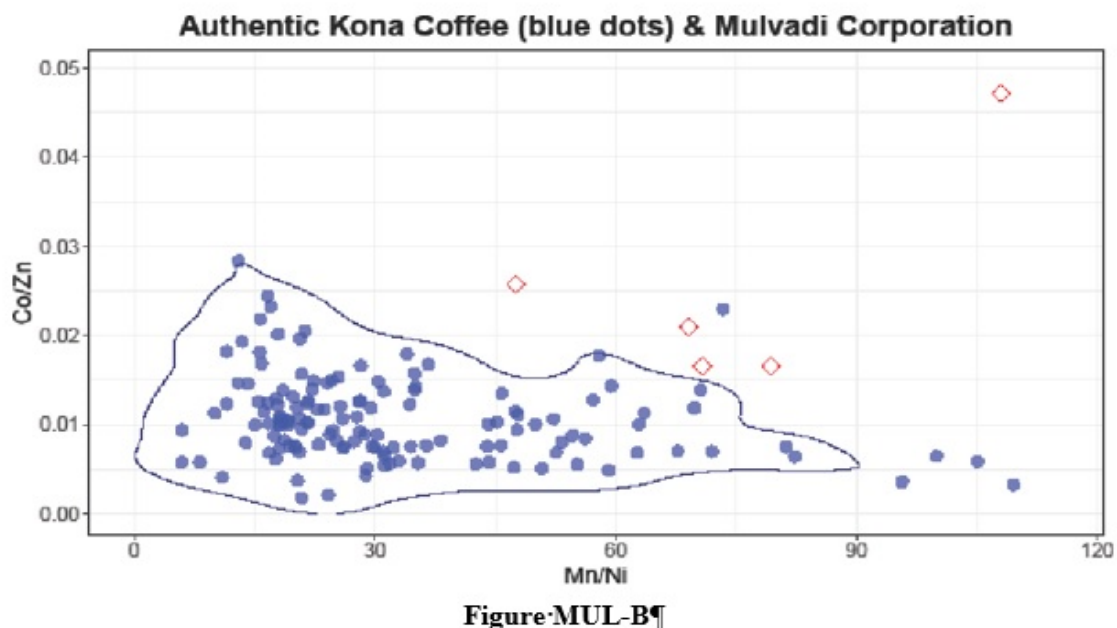
Figure MUL-2

ANSWER: KIHNIKE lacks sufficient information to admit or deny the allegations in Paragraph 71, and therefore denies the same.

72. The Mulvadi package is unequivocal as to its contents; it says "100% Kona Coffee" twice on its front face. Seeing that packaging on a shelf or online, any consumer would conclude that the package contains only Kona coffee beans. But the lab tests tell a different story. On the below scatter plot showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked by red diamonds) are well outside the range of authentic Kona. These packages are clearly not Kona. In other words, Mulvadi's designation of Kona as the origin of the coffee is false.



12 The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio
13 reinforces the same conclusion. These accused products (marked by red diamonds) are well outside
14 the range of authentic Kona. In other words, Mulvadi's designation of Kona as the origin of the
15 coffee in these products is false.



1 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
2 Paragraph 72, and therefore denies the same.

3
4 73. *HAWAIIAN ISLES KONA COFFEE LTD., LLC*. Hawaiian Isles falsely designates
5 the geographic origin of its “Kona” coffee products with the prominent placement of KONA on
6 the front of the packaging. Hawaiian Isles advertises its coffee products nationally on the Internet
7 and with digital marketing campaigns through social media sites such as Facebook. With its
8 marketing campaigns, Hawaiian Isles uses deceptive taglines and slogans such as “Taste the Kona
9 Difference,” “Bring Hawaii Home,” “Give the Gift of Aloha,” “Drink Kona Coffee and Relax,”
10 and “I Want My Toes in the Sand and Kona Coffee in My Hand,” among others. The deceptive
11 slogans are designed to mislead consumers into believing that Hawaiian Isles coffee products
12 primarily contain coffee from Hawaii, and more specifically the Kona District of Hawaii. In
13 addition, Hawaiian Isles uses deceptive names for its products intended to mislead consumers into
14 believing that the coffee products contain a significant amount of Kona coffee. The deceptive
15 product names include “Kona Classic,” “Kona Sunrise,” “Kona Hazelnut,” and “Kona Vanilla
16 Macadamia Nut.” Hawaiian Isles also designs its product packaging with imagery, text, and
17 advertising slogans intended to mislead the consumer into believing that the coffee product
18 contains coffee beans predominantly, if not exclusively, grown in Hawaii, and specifically in the
19 Kona District. The deceptive marketing slogans, product names, and package designs are all
20 intended to trade off the reputation and goodwill of the Kona name. They deliberately mislead the
21 consumer into believing that Hawaiian Isles coffee products contain significant amounts of
22 premium Kona coffee beans in order to justify the high price Hawaiian Isles charges for ordinary
23 commodity coffee.

24 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
25 Paragraph 73, and therefore denies the same.

74. Below are several examples of the deceptive “Kona” products sold by Hawaiian
Isles.



Figure HI-1



Figure HI-2

The packages themselves state “Made in Hawaii” on a banner on the front, above a map of Hawaii and a photograph of palm trees at sunset. The marketing copy on the side of the package states that the contents were “freshly roasted and packaged in Hawaii.” The package also states that “Kona Coffee is grown on the Big Island’s Kona Coast.” Given Hawaiian Isles’ unequivocal designation of “Kona” as the origin of the coffee in its products, consumers buying these products would reasonably believe that Kona, and only Kona, was the origin of the coffee contained therein.

ANSWER: KIHNIKE lacks sufficient information to admit or deny the allegations in Paragraph 74, and therefore denies the same.

75. But while consumers would reasonably believe that the packages in Figures HI-1 and HI-2 contain coffee that originates exclusively from Kona, the lab tests tell a different story. On the below scatter plot showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, the science indicates that the coffee contained in the Hawaiian Isles packages is highly unlikely to originate from Kona.

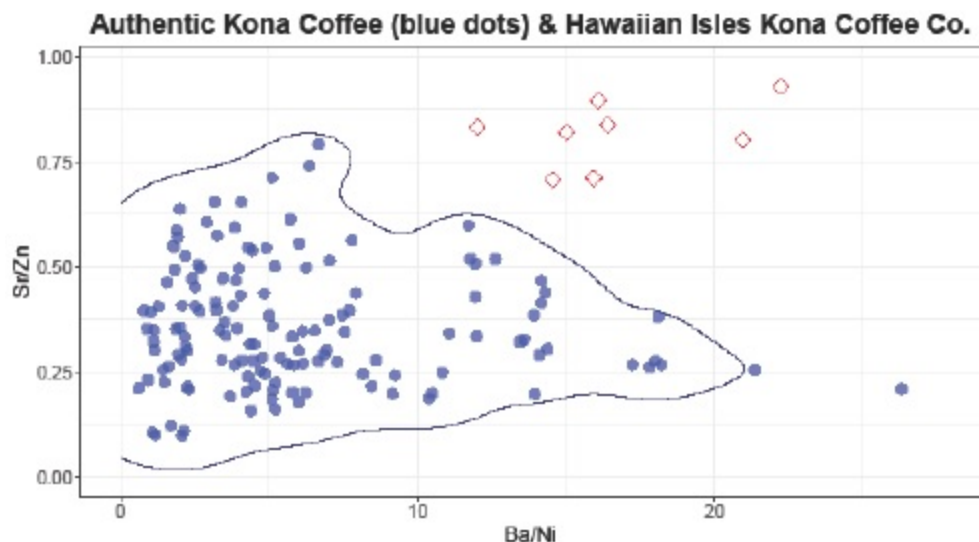


Figure HI-A

12 The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio
 13 reinforces the same conclusion. These accused products (marked by red diamonds) are well outside
 14 the range of authentic Kona. Again, the science indicates that the coffee contained in the Hawaiian
 15 Isles packages is highly unlikely to originate from Kona. In other words, Hawaiian Isles'
 16 designation of Kona as the origin of the coffee in these products is false

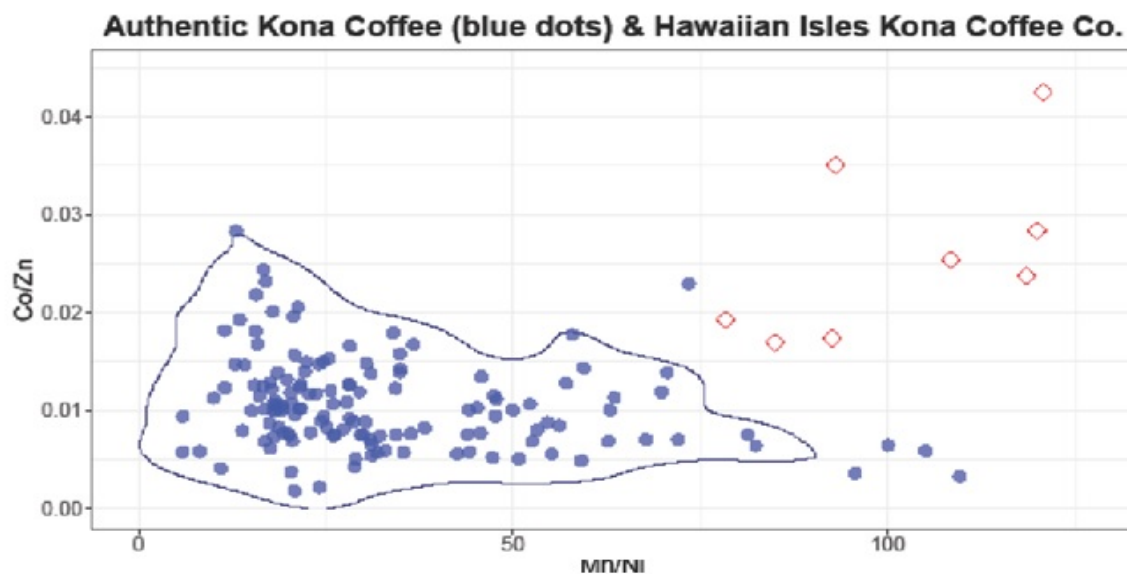


Figure HI-B

1 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
2 Paragraph 75, and therefore denies the same.

3
4 76. In fact, these bags appear to contain very little Kona coffee, if any. As a simple
5 indicator, note that authentic Kona has an average of less than forty times (40x) as much
6 manganese as nickel. In contrast, some Hawaiian Isles samples have one hundred twenty times
7 (120x) as much manganese as nickel. This evidence, and similar evidence from many other ratios,
8 leads to the conclusion that there must be very little Kona in this package. In other words, Hawaiian
9 Isles' designation of Kona as the origin of the coffee in these products is false.

10 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
11 Paragraph 76, and therefore denies the same.

12
13 77. Even a consumer understanding this package to be a blend of Kona and other
14 coffees (which is a conclusion that very few consumers would draw based on this particular
15 packaging) would expect the package to contain a meaningful percentage of Kona beans. Given
16 the deviation in the concentration ratios, though, it is implausible that this package meets those
17 consumer expectations.

18 **ANSWER:** KIHNKE denies all allegations in paragraph 77.

19
20 78. *GOLD COFFEE ROASTERS, INC.* Hawaiian Gold falsely designates the
21 geographic origin of its "Kona" coffee products with the prominent placement of KONA on the
22 front of the packaging. Hawaiian Gold boasts on its packaging and on its website,
23 www.goldcoffee.com, that the "Kona" coffee contained in its coffee products is cultivated on a
24 900-acre plantation in the Kona District, which Hawaiian Gold commonly refers to as the Parry
25 Estates. With its marketing, Hawaiian Gold uses deceptive taglines and slogans such as "Grown
26 in paradise. Enjoyed worldwide," "The Hawaiian Difference," "From our land to your hand"
27 (superimposed over a photograph of a tropical island), and "Striking flavor. Exotic character"

(superimposed over an image of lava flow). The deceptive slogans and imagery are designed to mislead consumers into believing that Hawaiian Gold coffee products contain coffee from Hawaii, and more specifically the Kona District of Hawaii. The deceptive product packaging prominently features the word “Kona” in large font and includes pictures of volcanic mountains, Bird of Paradise flowers, and other imagery indicative of Hawaii. The deceptive marketing, product names, and package designs are all intended to trade off the reputation and goodwill of the Kona name. They deliberately mislead the consumer into believing that Hawaiian Gold coffee products contain significant amounts of premium Kona coffee beans in order to justify the high price Hawaiian Gold charges for what is actually ordinary commodity coffee.

ANSWER: KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph 78, and therefore denies the same.

79. Below are representative images of Hawaiian Gold’s deceptive “Kona” coffee products.



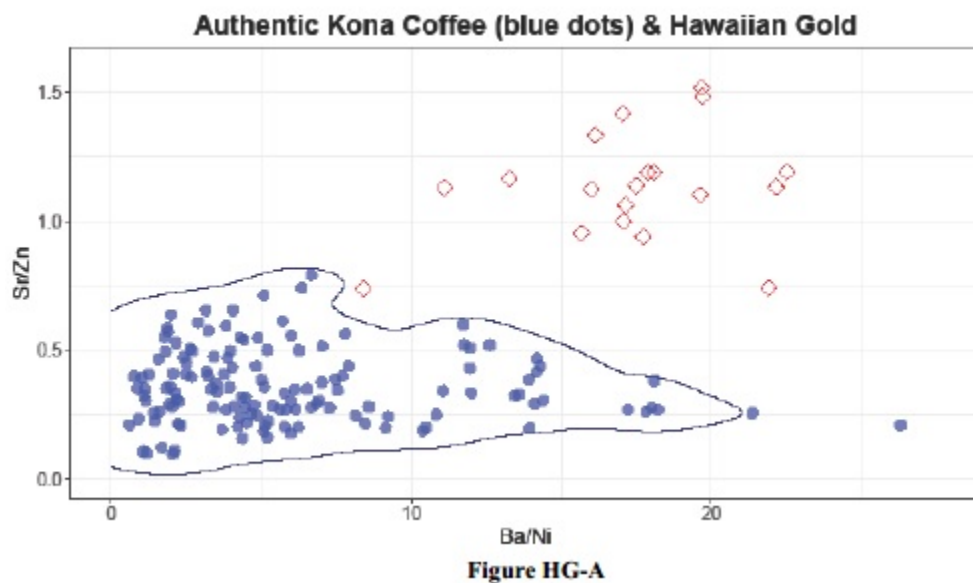
Figure HG-1



Figure HG-2

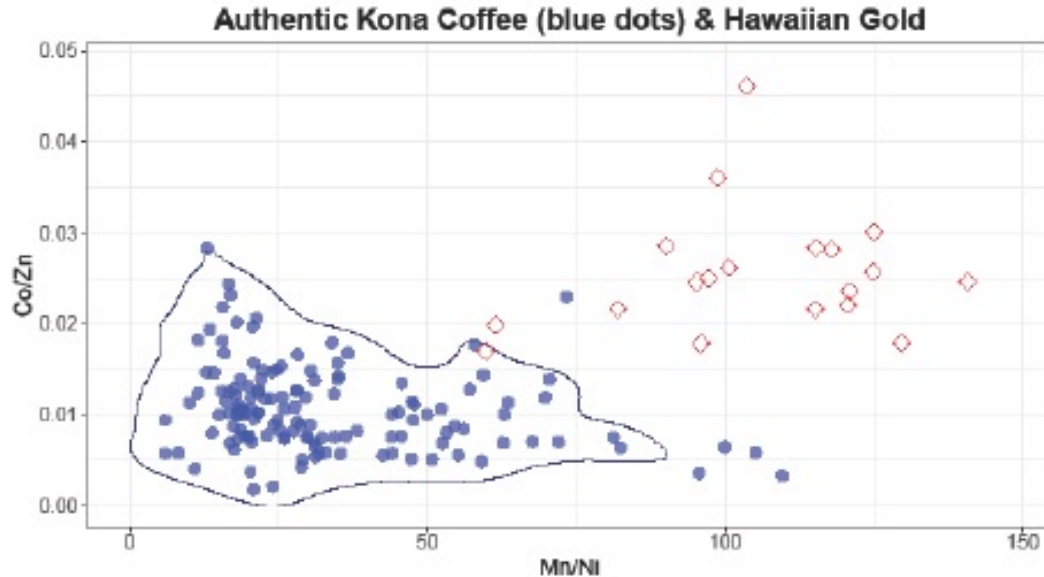
ANSWER: KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph 79, and therefore denies the same.

80. But while consumers would reasonably believe that the coffee in package HG-1 predominantly consisted of Kona beans, and the coffee in HG-2 contained nothing but 100% Kona, the lab tests tell a different story. On the below scatter plot showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, Hawaiian Gold's designation of Kona as the origin of the coffee in these products is false.



ANSWER: KIHNIKE lacks sufficient information to admit or deny the allegations in Paragraph 80, and therefore denies the same.

81. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio reinforces the same conclusion. These accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, Hawaiian Gold's designation of Kona as the origin of the coffee in these products is false.



ANSWER: KIHNIKE lacks sufficient information to admit or deny the allegations in Paragraph 81, and therefore denies the same.

82. In fact, the tested Hawaiian Gold products contain very little Kona coffee, if any. As an indicator, note that authentic Kona has an average of less than forty times (40x) as much manganese as nickel. In contrast, tests show that one of the Hawaiian Gold samples has roughly one hundred forty times (140x) as much manganese as nickel. This evidence, and similar evidence from many other ratios, leads to the conclusion that there is very little Kona in this bag.

ANSWER: KIHNIKE lacks sufficient information to admit or deny the allegations in Paragraph 82, and therefore denies the same.

83. Even a consumer understanding the coffee in the package shown in HG-1 to be a blend of Kona and other coffees (a conclusion that very few consumers would draw based on this particular packaging) would expect the package to contain a meaningful percentage of Kona beans.

1 Given the deviation in the concentration ratios, though, it is implausible that this package meets
2 those consumer expectations.

3 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
4 Paragraph 83, and therefore denies the same.

5
6 84. *COST PLUS/WORLD MARKET.* World Market sells both its own private-label
7 coffee products and coffee products offered by third parties, including coffee products falsely
8 identified as Kona coffee. World Market falsely designates the geographic origin of its “Kona”
9 coffee products with the prominent placement of KONA on the front of the packaging. For
10 example, World Market sells its own private-label coffee product labeled “Hawaiian Kona Blend”
11 in packaging intended to mislead the consumer into believing the that the product contains a
12 significant amount of Kona coffee beans, when the product actually contains little to no Kona
13 coffee. The deceptive packaging features hibiscus flowers and the prominent placement of
14 geographic terms “Hawaiian” and “Kona” in the center of the package label. The deceptive product
15 names and package designs are all intended to trade off the reputation and goodwill of the Kona
16 name. They deliberately mislead the consumer into believing that World Market coffee products
17 contain significant amounts of premium Kona coffee beans in order to justify the high price World
18 Market charges for what is actually ordinary commodity coffee.

19 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
20 Paragraph 84, and therefore denies the same.

21
22 85. Below is a sample image of the deceptive packaging used by World Market for its
23 private-label “Kona” coffee product.



Figure WM-1

ANSWER: KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph 85, and therefore denies the same.

86. In addition, World Market sells a variety of deceptive coffee products from Hawaiian Isles, such as those shown above in paragraph 73, all of which mislead the consumer into believing that the products contain a significant amount of Kona coffee beans when they actually contain little or no Kona.

ANSWER: KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph 86, and therefore denies the same.

87. While consumers would reasonably believe that the coffee in package WM-1 predominantly consisted of Kona beans, the lab tests tell a different story. On the below scatter plot showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products

(marked by red diamonds) are well outside the range of authentic Kona. In other words, World Market's designation of Kona as the origin of the coffee in these products is false.

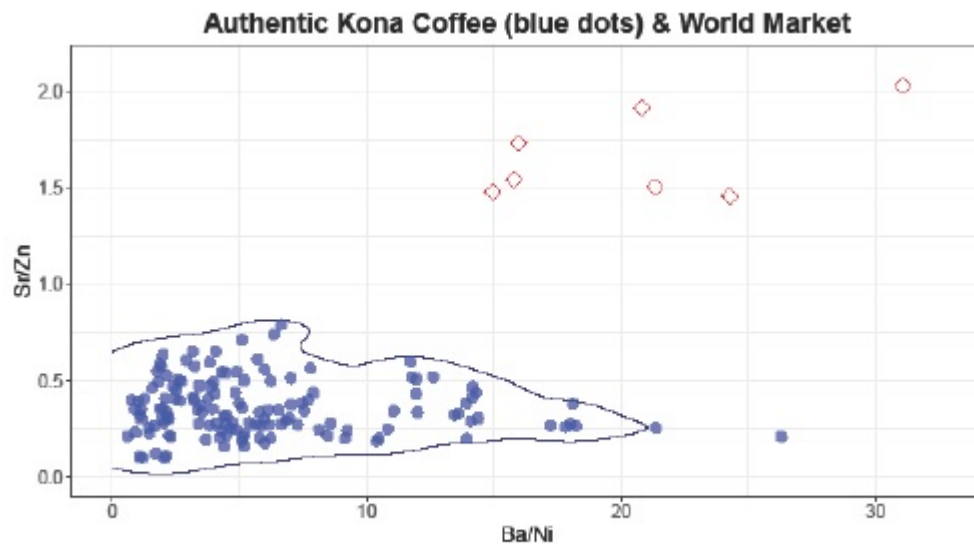
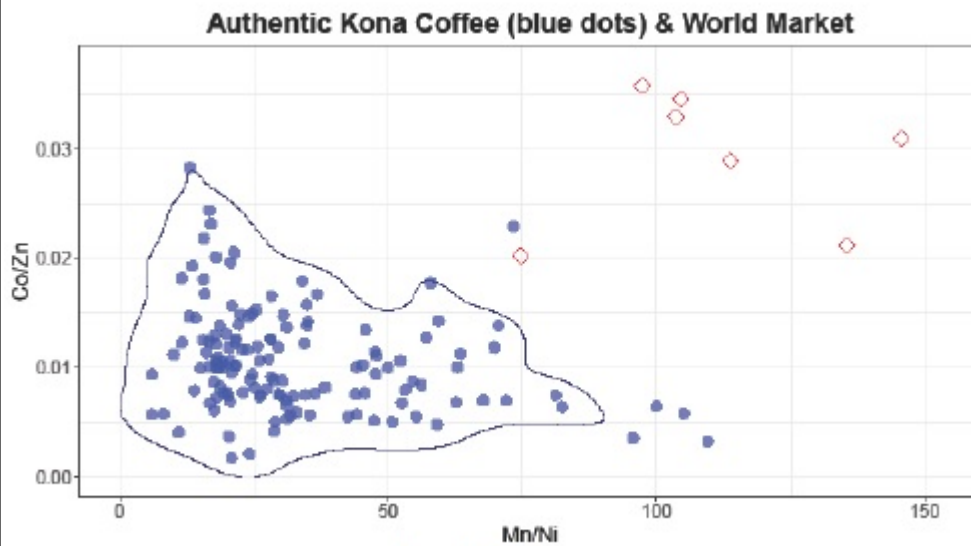


Figure WM-A

ANSWER: KIHNIKE lacks sufficient information to admit or deny the allegations in Paragraph 87, and therefore denies the same.

88. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio reinforces the same conclusion. These accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, World Market's designation of Kona as the origin of the coffee in these products is false.



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Figure WM-B

ANSWER: KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph 88, and therefore denies the same.

[Plaintiffs appear to have inadvertently omitted Paragraphs 89 and 90 from their Complaint.]

91. In fact, these bags contain very little Kona coffee, if any. As an indicator of how little Kona coffee is actually in the package, note that authentic Kona has an average of no more than forty times (40x) as much manganese as nickel. In contrast, World Market samples range as high as one hundred forty times (140x) as much manganese as nickel. This evidence, and similar evidence from many other ratios, leads to the conclusion that there is very little Kona in this bag.

ANSWER: KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph 91, and therefore denies the same.

92. Even a consumer understanding the coffee in the package shown in WM-1 to be a blend of Kona and other coffees (a conclusion that very few consumers would draw based on this particular packaging) would expect the package to contain a meaningful percentage of Kona beans.

1 Given the deviation in the concentration ratios, though, it is implausible that this package meets
2 those consumer expectations.

3 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
4 Paragraph 92, and therefore denies the same.

5
6 93. *BOYER'S*. Boyer's falsely designates the geographic origin of its "Kona" coffee
7 products with the prominent placement of KONA on the front of the packaging. For example,
8 Boyer's sells at least two different "Kona" coffee products. One is labeled "Café Kona" and the
9 other is labeled "Kona Blend." The Boyer's packaging is intended to mislead the consumer into
10 believing that the product contains a significant amount of Kona coffee beans, when the product
11 actually contains little to no Kona coffee. The deceptive product names are intended to trade off
12 the reputation and goodwill of the Kona name. They deliberately mislead the consumer into
13 believing that Boyer's coffee products contain significant amounts of premium Kona coffee beans
14 in order to justify the high price Boyer's charges for what is actually ordinary commodity coffee.
15 By using the term "Kona" to describe its products, Boyer's is falsely designating the geographic
16 origin of the product, creating confusion around the geographic origin, and damaging the
17 geographic designation itself. Boyer's use of the term "Kona" in the context of extolling the virtues
18 of Colorado roasting undermines the meaning of the term, damaging its value to the farmers of
19 authentic Kona in the Kona District.

20 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
21 Paragraph 93, and therefore denies the same.

94. Below are representative images of Boyer's deceptive "Kona" coffee products.



Figure BC-1



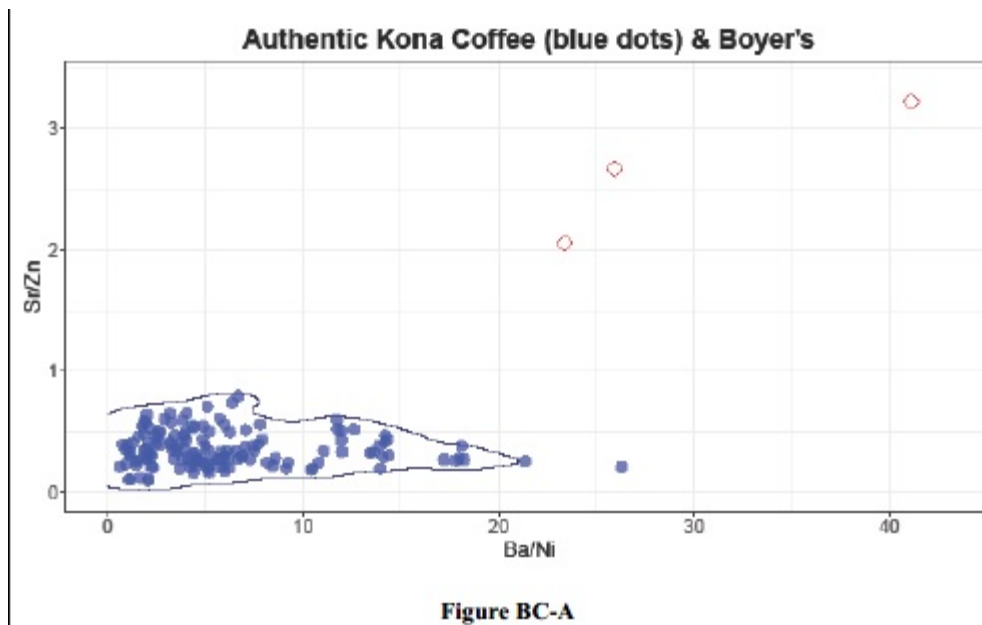
Figure BC-2²

2

ANSWER: KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph 94, and therefore denies the same.

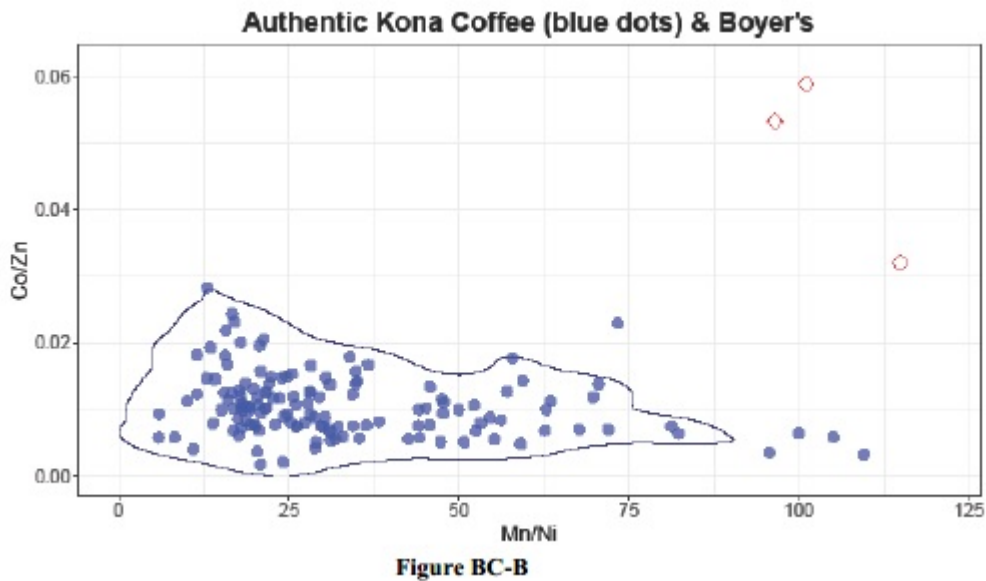
² Boyer's uses several variations of its packaging, but the differences are immaterial. Plaintiffs have archive photographs of each package actually tested.

95. While the packages say Kona, the lab tests tell a different story. On the below scatter plot showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, Boyer's designation of Kona as the origin of the coffee in these products is false.



ANSWER: KIHNIKE lacks sufficient information to admit or deny the allegations in Paragraph 95, and therefore denies the same.

96. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio reinforces the same conclusion. These accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, Boyer's designation of Kona as the origin of the coffee in these products is false.



12 **ANSWER:** KIHNIKE lacks sufficient information to admit or deny the allegations in
13 Paragraph 96, and therefore denies the same.

14
15 97. In fact, these bags contain very little Kona coffee, if any. As an indicator of how
16 little Kona coffee is actually in the package, note that authentic Kona has an average of no more
17 than forty times (40x) as much manganese as nickel. In contrast, Boyer's samples range as high as
18 one hundred ten times (110x) as much manganese as nickel. This evidence, and similar evidence
19 from many other ratios, leads to the conclusion that there is very little Kona in this bag.

20 **ANSWER:** KIHNIKE lacks sufficient information to admit or deny the allegations in
21 Paragraph 97, and therefore denies the same.

22
23 98. Even a consumer understanding the coffee in the packages shown in BC-1 and BC-
24 2 to be a blend of Kona and other coffees (a conclusion that very few consumers would draw based
25 on this particular packaging) would expect the package to contain a meaningful percentage of
26 Kona beans. Given the deviation in the concentration ratios, though, it is implausible that this
27 package meets those consumer expectations.

1 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
2 Paragraph 98, and therefore denies the same.

3
4 99. *L&K COFFEE CO. LLC (MAGNUM EXOTICS)*. L&K falsely designates the
5 geographic origin of its “Kona” coffee products with the prominent placement of KONA on the
6 front of the packaging. With its marketing and packaging, L&K uses deceptive taglines and
7 slogans such as “Certified,” “Kona High Mountain Coffee” and “100% High MT. Arabica
8 Coffee.” On its online store, L&K describes its “Kona” coffee product as “Grown high in the
9 mountains of Hawaii, this blended coffee has the perfect balance of light taste, full body and
10 moderate acidity.” The deceptive marketing is designed to mislead consumers into believing that
11 L&K’s Magnum Exotics “Kona” products contain coffee from the Kona District, when the coffee
12 products actually do not contain a significant amount of Kona coffee, if any. L&K also designs its
13 Magnum Exotics product packaging with imagery and text intended to mislead the consumer into
14 believing that the coffee product contains coffee beans predominantly, if not exclusively, grown
15 in Hawaii, and specifically in the Kona region. The deceptive imagery utilized by L&K includes
16 illustrations of beaches, humming birds, hibiscus flowers, toucan birds, and tropical islands. The
17 deceptive marketing, product names, and package designs are all intended to trade off the
18 reputation and goodwill of the Kona name. They deliberately mislead the consumer into believing
19 that L&K’s Magnum Exotics coffee products contain significant amounts of premium Kona coffee
20 beans in order to justify the high price L&K charges for what is actually ordinary commodity
21 coffee.

22 **ANSWER:** L&K’s online website and its packaging speaks for itself. L&K’s Kona blends
23 were marketed and sold as blends in states other than Hawaii. L&K’s Kona Blends contained a
24 small amount of Kona beans. L&K denies that consumers were “tricked” into buying a \$7 to \$8
25 dollar pound of Kona Blend instead of buying a \$35 to \$50 dollar pound of plaintiffs’ coffee. No
26 consumer would reasonably believe that they were purchasing \$35 to \$50 dollar coffee for \$7 or
27 \$8 dollars. KIHNKE denies that L&K’s coffee products are deceptively labeled. L&K does not

1 sell any of the products described in this complaint and has not sold any since 2019. KIHNKE
2 denies all remaining allegations in paragraph 99.

3
4 100. Below is a representative image of L&K's deceptive "Kona" coffee products.



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13 **Figure ME-1**

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15 **ANSWER:** KIHNKE admits that this package was used by L&K prior to March 2019.
16 KIHNKE denies that L&K's packaging is deceptive and further denies any remaining allegation
17 in paragraph 100.
18
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101. While consumers would reasonably believe that the coffee contained in the package shown in Figure ME-1 originated from Kona, the lab tests tell a different story. On the below scatter plot showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, L&K's designation of Kona as the origin of the coffee in these products is false.

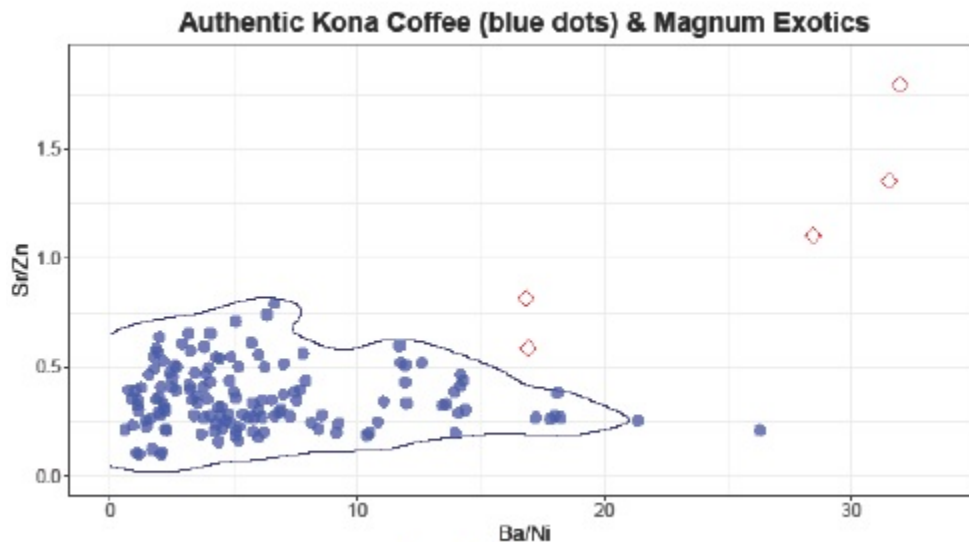


Figure ME-A

ANSWER: KIHNKE denies that consumers were “tricked” into buying a \$7 to \$8 dollar pound of Kona Blend instead of buying a \$35 to \$50 dollar pound of plaintiffs’ coffee. No consumer would reasonably believe that they were purchasing \$35 to \$50 dollar coffee for \$7 or \$8 dollars. KIHNKE notes that the scatter plots appear distorted. KIHNKE denies that L&K’s coffee products are deceptively labeled. L&K does not sell any of the products described in this complaint and has not sold any since 2019. KIHNKE lacks sufficient information to admit or deny the other allegations in Paragraph 101, and therefore denies the same.

102. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio reinforces the same conclusion. These accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, L&K's designation of Kona as the origin of the coffee in these products is false.

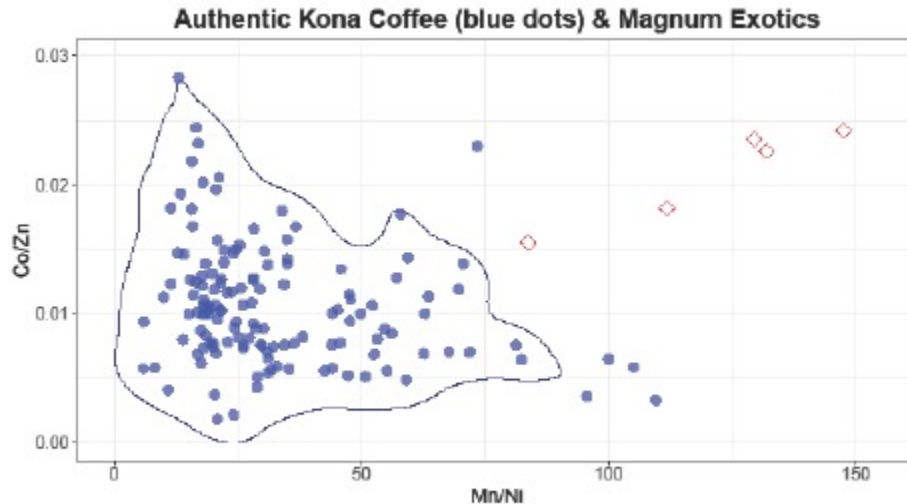


Figure ME-B

ANSWER: KIHNKE denies that consumers were “tricked” into buying a \$7 to \$8 dollar pound of Kona Blend instead of buying a \$35 to \$50 dollar pound of plaintiffs’ coffee. No consumer would reasonably believe that they were purchasing \$35 to \$50 dollar coffee for \$7 or \$8 dollars. KIHNKE notes that the scatter plots appear distorted. KIHNKE denies that L&K’s coffee products are deceptively labeled. L&K does not sell any of the products described in this complaint and has not sold any since 2019. KIHNKE lacks sufficient information to admit or deny the other allegations in Paragraph 102, and therefore denies the same.

103. In fact, these bags contain very little Kona coffee, if any. As an indicator, note that authentic Kona has an average of less than forty times (40x) as much manganese as nickel. In contrast, Magnum Exotics samples range as high as one hundred forty-five times (145x) as much manganese as nickel. This evidence, and similar evidence from many other ratios, leads to the conclusion that there is very little Kona in L&K’s Magnum Exotics coffee products.

1 **ANSWER:** KIHNKE denies that consumers were “tricked” into buying a \$7 to \$8 dollar
2 pound of Kona Blend instead of buying a \$35 to \$50 dollar pound of plaintiffs’ coffee. No
3 consumer would reasonably believe that they were purchasing \$35 to \$50 dollar coffee for \$7 or
4 \$8 dollars. KIHNKE notes that the scatter plots appear distorted. KIHNKE denies that L&K’s
5 coffee products are deceptively labeled. L&K does not sell any of the products described in this
6 complaint and has not sold any since 2019. KIHNKE lacks sufficient information to admit or deny
7 the other allegations in Paragraph 103, and therefore denies the same.

8
9 104. Even a consumer understanding the coffee in the package shown in ME-1 to be a
10 blend of Kona and other coffees (a conclusion that very few consumers would draw based on this
11 particular packaging) would expect the package to contain a meaningful percentage of Kona beans.
12 Given the deviation in the concentration ratios, though, it is implausible that this package meets
13 those consumer expectations.

14 **ANSWER:** KIHNKE denies that consumers were “tricked” into buying a \$7 to \$8 dollar
15 pound of Kona Blend instead of buying a \$35 to \$50 dollar pound of plaintiffs’ coffee. No
16 consumer would reasonably believe that they were purchasing \$35 to \$50 dollar coffee for \$7 or
17 \$8 dollars. KIHNKE denies that L&K’s coffee products are deceptively labeled. L&K does not
18 sell any of the products described in this complaint and has not sold any since 2019. KIHNKE
19 lacks sufficient information to admit or deny the other allegations in Paragraph 104, and therefore
20 denies the same.

21
22 105. *COPPER MOON COFFEE.* Copper Moon falsely designates the geographic origin
23 of its “Kona” coffee products with the prominent placement of KONA on the front of the
24 packaging. In addition, Copper Moon uses deceptive names for its products intended to mislead
25 consumers into believing that the coffee products contain a significant amount of Kona coffee. The
26 deceptive product names include “Kona 100% Arabica Premium Blend,” and “Kona Premium
27 Blend.” On its website, Copper Moon identifies the sources of the beans used in their coffee

products, which include Nicaragua, Rwanda, Peru, and Ethiopia. Noticeably absent is any description for the source of the Kona coffee that they purportedly use in their Kona coffee products. Copper Moon also designs its product packaging with imagery and text intended to mislead the consumer into believing that the product labeled “Kona” contains coffee beans predominantly, if not exclusively, grown in the Kona District. For example, Copper Moon’s “Kona” products prominently feature a postage stamp of the iconic plumeria flower, used in Hawaiian lei, to mislead consumers into believing that the origin of the coffee product is Kona, Hawaii. The deceptive marketing, product names, and package designs are all intended to trade off the reputation and goodwill of the Kona name. They deliberately mislead the consumer into believing that Copper Moon coffee products contain significant amounts of premium Kona coffee beans in order to justify the high price Copper Moon charges for ordinary commodity coffee beans.

ANSWER: KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph 105, and therefore denies the same.

106. Below are representative images of Copper Moon’s deceptive “Kona” coffee products.



Figure CM-1

1 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
2 Paragraph 106, and therefore denies the same.

3
4 107. Copper Moon follows the term “Kona” with the percentage “100%,” which alone
5 reinforces the impression that the coffee is unadulterated Kona. The misleading placement of
6 “100%” near the term “Kona” is a deceptive practice employed by Copper Moon and other
7 defendants to mislead consumers into believing that the product contains 100% Kona coffee.

8 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
9 Paragraph 107, and therefore denies the same.

10
11 108. Copper Moon also labels its product as “100% Arabica,” which is a deception that
12 is common across many defendants. Like over 75% of the world’s coffee production, Kona is a
13 kind of Arabica coffee bean. The term “Kona” followed by the phrase “100% Arabica” is therefore
14 consistent with the bag containing pure Kona coffee. And it is not consistent with the bag
15 containing non-Kona Arabica coffees. Imagine, for example, that the package had said “Kona —
16 100% Coffee.” That marketing line would be just as true for real Kona, and just as meaningless,
17 as the “100% Arabica” line. And that language would never be interpreted as allowing the
18 substitution of commodity coffee, since it “discloses” that it contains 100% coffee. Similarly,
19 labeling a product with the phrase “100% Arabica” does not allow a defendant to substitute cheaper
20 Arabica beans for Kona beans, while misleading consumers to believe that the product contains
21 100% Kona coffee.

22 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
23 Paragraph 108, and therefore denies the same.

24
25 109. But while consumers would reasonably believe that the package in Figures CM-1
26 contains 100% Kona coffee, the lab tests tell a different story. On the below scatter plot showing
27 the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked by red

diamonds) are well outside the range of authentic Kona. In other words, Copper Moon's designation of Kona as the origin of the coffee in its products is false.

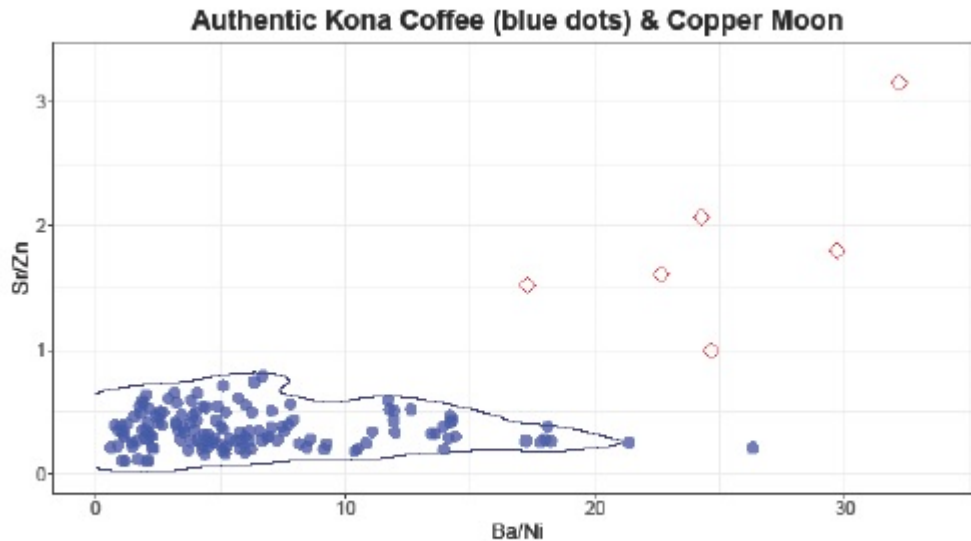
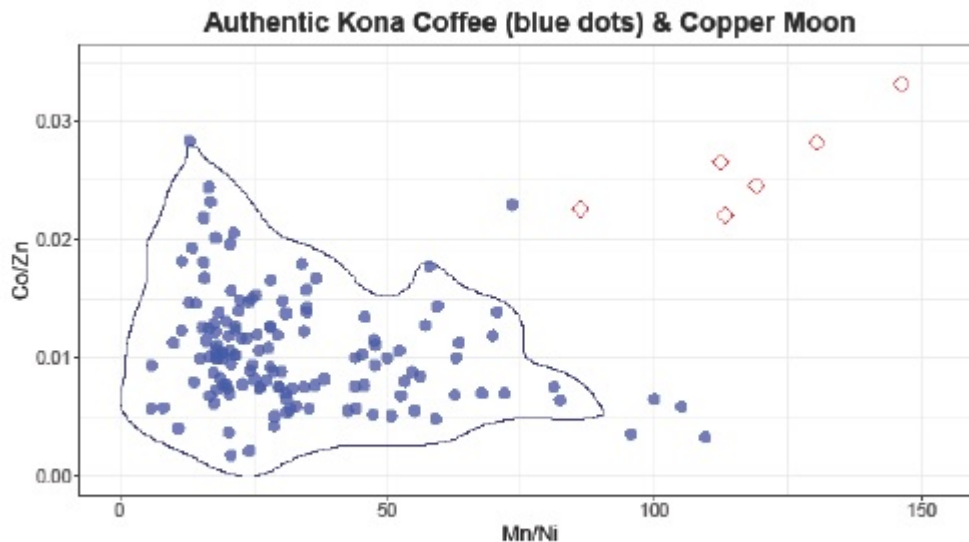


Figure CM-A

ANSWER: KIHNIKE lacks sufficient information to admit or deny the allegations in Paragraph 109, and therefore denies the same.

110. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio reinforces the same conclusion. These accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, Copper Moon's designation of Kona as the origin of the coffee in its products is false.



ANSWER: KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph 110, and therefore denies the same.

111. In fact, these bags contain very little Kona coffee, if any. As an indicator, note that authentic Kona has an average of less than eight times (8x) as much barium as nickel. In contrast, a Cooper Moon sample has over thirty times (30x) as much barium as nickel. This evidence, and similar evidence from many other ratios, leads to the conclusion that there is very little Kona in this bag.

ANSWER: KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph 111, and therefore denies the same.

112. Even a consumer understanding the coffee in the package shown in CB-1 to be a blend of Kona and other coffees (a conclusion that very few consumers would draw based on this particular packaging) would expect the package to contain a meaningful percentage of Kona beans.

1 Given the deviation in the concentration ratios, though, it is implausible that this package meets
2 those consumer expectations.

3 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
4 Paragraph 112, and therefore denies the same.

5
6 113. *CAMERON'S*. Cameron's falsely designates the geographic origin of its "Kona"
7 coffee products with the prominent placement of KONA on its packaging. Cameron's also
8 describes its "Kona" coffee products as "premium," when the coffee beans in the product are not
9 "premium" beans from Kona but are instead merely commodity coffee beans from other regions
10 of the world. To further deceive consumers as to the origin of the coffee beans in their "Kona"
11 coffee products, Cameron's packaging features a tropical flower to further the association between
12 Hawaii and the Cameron's product in the mind of the consumer. Cameron's false designation of
13 Kona as the origin of the coffee is intended to trade off the reputation and goodwill of the Kona
14 name. They deliberately mislead the consumer into believing that Cameron's coffee products
15 contain premium Kona coffee beans in order to justify the high price Cameron's charges for
16 ordinary commodity coffee beans.

17 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
18 Paragraph 113, and therefore denies the same.

19
20 114. Below are representative images of the deceptive packaging used by Cameron's for
21 its "Kona" coffee products.



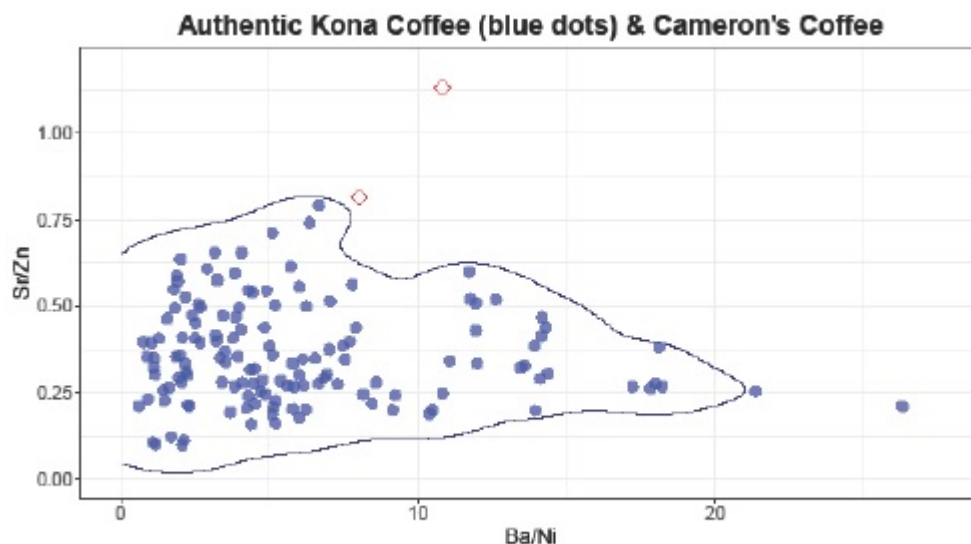
Figure CC-1



Figure CC-2

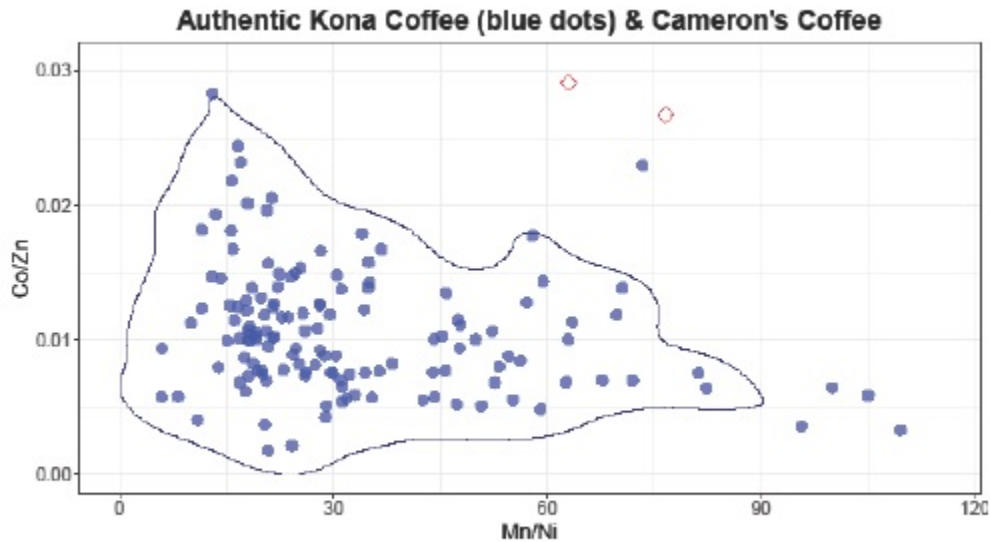
ANSWER: KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph 114, and therefore denies the same.

115. But while consumers could reasonably believe that the packages in Figures CC-1 and CC-2 contain nothing but Kona coffee, the lab tests tell a different story. On the below scatter plot showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, Cameron's designation of Kona as the origin of the coffee in its products is false.



ANSWER: KIHNIKE lacks sufficient information to admit or deny the allegations in Paragraph 115, and therefore denies the same.

116. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio reinforces the same conclusion. These accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, Cameron's designation of Kona as the origin of the coffee in its products is false.



10
11
12 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
13 Paragraph 116, and therefore denies the same.

14
15 117. Even a consumer understanding the coffee in the package shown in CC-1 to be a
16 blend of Kona and other coffees (a conclusion that very few consumers would draw based on this
17 particular packaging) would expect the package to contain a meaningful percentage of Kona beans.
18 Given the deviation in the concentration ratios, though, it is implausible that this package meets
19 those consumer expectations.

20 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
21 Paragraph 117, and therefore denies the same.

22
23 118. *THE KROGER CO.* With its private-label “Kivu,” Kroger falsely designates the
24 geographic origin of its “Kona” coffee products with the prominent placement of KONA on the
25 label of both its pre-packaged products and its self-serve dispensers. In addition, Kroger sells
26 coffee products from Hawaiian Gold, which also falsely designates Kona as the geographic origin.
27 Kroger designs its product packaging with imagery intended to mislead the consumer into

believing that the coffee product contains coffee beans grown in the Kona District. The deceptive packaging prominently features the word KONA with images of hibiscus flowers and tropical islands. The self-serve dispensary for the Kivu coffee describes the product as “premium coffee ... grown on the steep slopes of the Kona region of Hawaii.” These statements are intended to mislead consumers into believing that the Kona coffee sold under the Kivu label is cultivated in the Kona region, when in fact the product is mostly commodity coffee beans grown in other parts of the world. The deceptive package design featuring the false designation of Kona as the origin of the coffee is intended to trade off the reputation and goodwill of the Kona name. They deliberately mislead the consumer into believing that Kroger’s coffee products contain nothing but premium Kona coffee beans in order to justify the high price Kroger charges for ordinary commodity coffee beans.

ANSWER: KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph 118, and therefore denies the same.

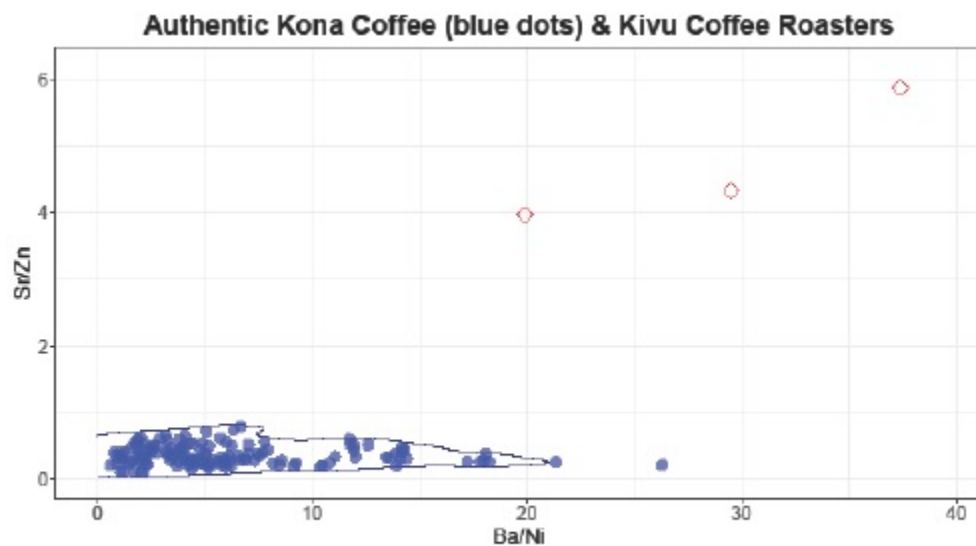
119. Below is a sample image of the deceptive packaging used by Kroger for its private-label “Kona” coffee product at its self-serve dispensers found in its retail stores.



Figure Kroger-1

1 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
 2 Paragraph 119, and therefore denies the same.

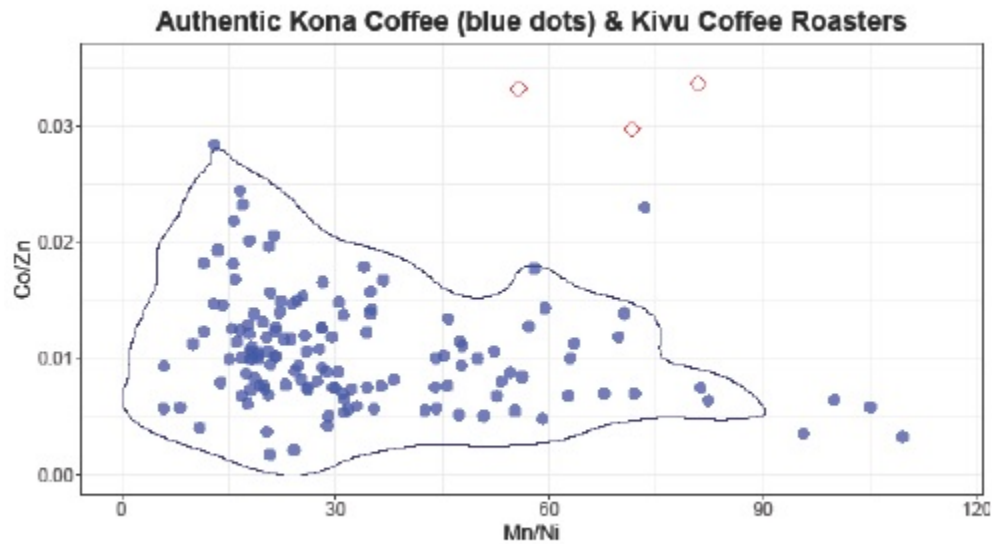
3
 4 120. But while consumers could reasonably believe that the package in Figure Kroger-
 5 1 contains nothing but Kona coffee, the lab tests tell a different story. On the below scatter plot
 6 showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked
 7 by red diamonds) are well outside the range of authentic Kona. In other words, Kroger's
 8 designation of Kona as the origin of the coffee in its Kivu products is false.



19 **Figure Kroger-A**

20 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
 21 Paragraph 120 and therefore denies the same.

22
 23 121. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-
 24 nickel ratio reinforces the same conclusion. These accused Kroger Kivu products (marked by red
 25 diamonds) are well outside the range of authentic Kona. In other words, Kroger's designation of
 26 Kona as the origin of the coffee in its Kivu products is false.



ANSWER: KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph 121, and therefore denies the same.

122. In fact, these bags contain very little Kona coffee, if any. As an indicator, note that authentic Kona has less strontium than zinc. (See Figure Kroger-A.) In contrast, Kivu samples have between four times (4x) and six times (6x) as much strontium as zinc. This evidence, and similar evidence from many other ratios, leads to the conclusion that there is very little Kona in this bag.

ANSWER: KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph 122, and therefore denies the same.

123. Even a consumer understanding the coffee in the package shown in Kroger-1 to be a blend of Kona and other coffees (a conclusion that very few consumers would draw based on this particular packaging) would expect the package to contain a meaningful percentage of Kona beans. Given the deviation in the concentration ratios, though, it is implausible that this package meets those consumer expectations.

1 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
2 Paragraph 123, and therefore denies the same.

3
4 124. *AMAZON.COM*. Through its online store at www.amazon.com, Amazon sells a
5 variety of deceptive coffee products, including but not limited to the following: MCC, Hawaiian
6 Isles, Hawaii Gold, Mulvadi, Cameron's, Copper Moon, Hazz, and Magnum Exotics. Each of
7 these brands offers products through Amazon that falsely designate KONA as the origin of the
8 coffee beans. And Amazon wrongfully profits on each sale.

9 **ANSWER:** KIHNKE admits that L&K has sold certain coffee products through
10 Amazon.com. KIHNKE denies that L&K's coffee products are deceptive, and further denies that
11 Amazon wrongfully profits on the sale of L&K coffee products. KIHNKE denies that consumers
12 were "tricked" into buying a \$7 to \$8 dollar pound of Magnum's Kona Blend instead of buying a
13 \$35 to \$50 dollar pound of plaintiffs' coffee. No consumer would reasonably believe that they
14 were purchasing \$35 to \$50 dollar coffee for \$7 or \$8 dollars. KIHNKE denies L&K's coffee
15 products are deceptively labeled. L&K does not sell any of the products described in this
16 complaint and has not sold any since 2019. KIHNKE lacks sufficient information to admit or deny
17 the remaining allegations in Paragraph 124, and therefore denies the same.

18
19 125. *WALMART*. Walmart sells a variety of deceptive coffee products, including but not
20 limited to the following: MCC, Copper Moon, Cameron's, Hawaiian Gold, Boyer's, Hawaiian
21 Isles, and Mulvadi. Walmart wrongfully profits on each sale.

22 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
23 Paragraph 125, and therefore denies the same.

24
25 126. *COSTCO*. Costco sells a variety of deceptive coffee products, including but not
26 limited to Magnum Exotics. Costco wrongfully profits on each sale.

1 **ANSWER:** KIHNKE admits that L&K has sold certain coffee products through Costco.
2 KIHNKE denies that L&K's coffee products are deceptive, and further denies that Costco
3 wrongfully profits on the sale of L&K coffee products. KIHNKE denies that consumers were
4 "tricked" into buying a \$7 to \$8 dollar pound of Magnum's Kona Blend instead of buying a \$35
5 to \$50 dollar pound of plaintiffs' coffee. No consumer would reasonably believe that they were
6 purchasing \$35 to \$50 dollar coffee for \$7 or \$8 dollars. KIHNKE denies L&K's coffee products
7 are deceptively labeled. L&K does not sell any of the products described in this complaint and
8 has not sold any since 2019. KIHNKE lacks sufficient information to admit or deny the remaining
9 allegations in Paragraph 126, and therefore denies the same.

10
11 127. *BED BATH & BEYOND*. Bed Bath sells a variety of deceptive coffee products,
12 including but not limited to Copper Moon. Bed Bath wrongfully profits on each sale.

13 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
14 Paragraph 127, and therefore denies the same.

15
16 128. *ALBERTSONS & SAFEWAY*. Albertsons and Safeway generally offer for sale the
17 same coffee products featuring Kona on the label. They both sell a variety of deceptive coffee
18 products, including but not limited to Hawaiian Isles. Safeway also sells deceptive coffee products
19 from Cameron's. Albertsons and Safeway wrongfully profit on each sale.

20 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
21 Paragraph 128, and therefore denies the same.

22
23 129. *MNS LTD. ("ABC")*. ABC sells a variety of deceptive coffee products, including
24 but not limited to the following: Mulvadi, MCC and Hawaiian Isles. ABC wrongfully profits on
25 each sale.

26 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
27 Paragraph 129, and therefore denies the same.

1 130. *TJX*. Through its retail stores branded T.J. Maxx, TJX sells a variety of deceptive
2 coffee products, including but not limited to the following: Hawaiian Gold, Magnum Exotics, and
3 Kona Roasting Co. TJX wrongfully profits on each sale.

4 **ANSWER:** KIHNKE admits that L&K has sold certain coffee products through TJX.
5 KIHNKE denies that L&K's coffee products are deceptive, and further denies that TJX wrongfully
6 profits on the sale of L&K coffee products. KIHNKE denies that consumers were "tricked" into
7 buying a \$7 to \$8 dollar pound of Magnum's Kona Blend instead of buying a \$35 to \$50 dollar
8 pound of plaintiffs' coffee. No consumer would reasonably believe that they were purchasing \$35
9 to \$50 dollar coffee for \$7 or \$8 dollars. KIHNKE denies L&K's coffee products are deceptively
10 labeled. L&K does not sell any of the products described in this complaint and has not sold any
11 since 2019. KIHNKE lacks sufficient information to admit or deny the remaining allegations in
12 Paragraph 130, and therefore denies the same.

13
14 131. *MARSHALLS OF MA*. Through its retail stores branded Marshalls, Marshalls of
15 MA sells a variety of deceptive coffee products, including but not limited to the following:
16 Hawaiian Gold, Magnum Exotics, and Kona Roasting Co. Marshalls of MA wrongfully profits on
17 each sale.

18 **ANSWER:** KIHNKE admits that L&K has sold certain coffee products through Marshalls.
19 KIHNKE denies that L&K's coffee products are deceptive, and further denies that Marshalls
20 wrongfully profits on the sale of L&K coffee products. KIHNKE denies that consumers were
21 "tricked" into buying a \$7 to \$8 dollar pound of Magnum's Kona Blend instead of buying a \$35
22 to \$50 dollar pound of plaintiffs' coffee. No consumer would reasonably believe that they were
23 purchasing \$35 to \$50 dollar coffee for \$7 or \$8 dollars. KIHNKE denies L&K's coffee products
24 are deceptively labeled. L&K does not sell any of the products described in this complaint and
25 has not sold any since 2019. KIHNKE lacks sufficient information to admit or deny the remaining
26 allegations in Paragraph 131, and therefore denies the same.

1 132. *SPROUTS*. Sprouts sells a variety of deceptive coffee products, including but not
2 limited to Cameron's. Sprouts wrongfully profits on each sale.

3 **ANSWER:** KIHNKE lacks sufficient information to admit or deny the allegations in
4 Paragraph 132, and therefore denies the same.

5
6 **CAUSE OF ACTION**
7 **FALSE DESIGNATION OF ORIGIN, FALSE ADVERTISING, AND**
8 **UNFAIR COMPETITION UNDER LANHAM ACT §43(A)**
9 **(15 U.S.C. §1125(A))**

10 133. Plaintiffs hereby incorporate by reference the allegations of the foregoing
11 paragraphs as though fully set forth herein.

12 **ANSWER:** KIHNKE incorporates by reference each of the foregoing paragraphs,
13 including the admissions and denials therein, as though fully set forth herein.

14 134. Section 43(a) of the Lanham Act provides in pertinent part: "Any person, who, on
15 or in connection with any goods or services, or any container of goods, uses in commerce any word,
16 term, name, symbol, or device, or any combination thereof, or any false designation of origin, false
17 or misleading description of fact, or false or misleading representation of fact, which ... (A) is likely
18 to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association
19 of such person with another person, or as to the origin, sponsorship, or approval of his or her goods,
20 services, or commercial activities by another person, or (B) in commercial advertising or promotion,
21 misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another
22 person's goods, services, or commercial activities, shall be liable in a civil action by any person
23 who believes that he or she is or is likely to be damaged by such act." 15 U.S.C.
24 §1125(a)(1)(A)&(B).

25 **ANSWER:** The allegations in Paragraph 134 are legal conclusions not requiring a
26 response. To the extent that a response is required, KIHNKE denies these allegations. L&K does
27 not sell any of the products described in this complaint and has not sold any since 2019.

1 135. Plaintiffs and the Class, comprised entirely of farmers of authentic Kona coffee,
2 have a reasonable and genuine interest to be protected against the Defendants' false designation of
3 origin and sale of coffee products fraudulently labeled as Kona.

4 **ANSWER:** KIHNKE denies the allegations in Paragraph 135.

5
6 136. In violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a)(1), Defendants
7 have used, continue to use and/or profit from the use of the Kona name as a false designation of
8 origin.

9 **ANSWER:** KIHNKE denies the allegations in Paragraph 136 to the extent they relate to
10 L&K coffee products. L&K does not sell any of the products described in this complaint and has
11 not sold any since 2019. KIHNKE lacks sufficient information to admit or deny the allegations in
12 Paragraph 136 to the extent they relate to other accused coffee products, and therefore denies the
13 same.

14
15 137. In violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A),
16 Defendants' false designation of origin for the coffee products they manufacture, distribute and/or
17 sell in commerce is likely to cause consumer confusion and mistaken purchases, and is likely to
18 deceive consumers as to the origin of the coffee products manufactured, distributed and/or sold by
19 Defendants.

20 **ANSWER:** KIHNKE denies the allegations in Paragraph 137 to the extent they relate to
21 L&K coffee products. KIHNKE denies that L&K's coffee products are deceptive. KIHNKE
22 denies that consumers were "tricked" into buying a \$7 to \$8 dollar pound of Magnum's Kona
23 Blend instead of buying a \$35 to \$50 dollar pound of plaintiffs' coffee. No consumer would
24 reasonably believe that they were purchasing \$35 to \$50 dollar coffee for \$7 or \$8 dollars.
25 KIHNKE denies L&K's coffee products are deceptively labeled. L&K does not sell any of the
26 products described in this complaint and has not sold any since 2019. KIHNKE lacks sufficient
27

1 information to admit or deny the allegations in Paragraph 137 to the extent they relate to other
2 accused coffee products, and therefore denies the same.

3
4 138. In violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a)(1)(B),
5 Defendants have used in commerce descriptions that falsely and/or misleadingly designate Kona
6 as the origin of the coffee products, when most of the coffee beans contained in the coffee products
7 were sourced from other regions of the world.

8 **ANSWER:** KIHNKE denies the allegations in Paragraph 138 to the extent they relate to
9 L&K coffee products. KIHNKE denies that L&K's coffee products are deceptive. KIHNKE
10 denies that consumers were "tricked" into buying a \$7 to \$8 dollar pound of Magnum's Kona
11 Blend instead of buying a \$35 to \$50 dollar pound of plaintiffs' coffee. No consumer would
12 reasonably believe that they were purchasing \$35 to \$50 dollar coffee for \$7 or \$8 dollars.
13 KIHNKE denies L&K's coffee products are deceptively labeled. L&K does not sell any of the
14 products described in this complaint and has not sold any since 2019. KIHNKE lacks sufficient
15 information to admit or deny the remaining allegations in Paragraph 138 to the extent they relate
16 to other accused coffee products, and therefore denies the same.

17
18 139. By marketing and selling coffee products that falsely designate Kona as the origin
19 of coffee beans that are of inferior quality, Defendants are damaging the reputation and goodwill
20 of the Kona name, as well as the market value of authentic Kona coffee, to the detriment of
21 Plaintiffs and the Class.

22 **ANSWER:** KIHNKE denies the allegations in Paragraph 139 to the extent they relate to
23 L&K coffee products. There is and never will be credible evidence that L&K or KIHNKE did
24 anything that had an impact on Kona coffee prices, or the reputation or goodwill of the "Kona
25 name," in which no plaintiff or class member has a legally cognizable ownership or proprietary
26 interest. L&K does not sell any of the products described in this complaint and has not sold any
27 since 2019. KIHNKE lacks sufficient information to admit or deny the remaining allegations in

1 Paragraph 139 to the extent they relate to other accused coffee products, and therefore denies the
2 same.

3
4 140. Plaintiffs and the Class are comprised of farmers of authentic Kona coffee who
5 have been and continue to be damaged by Defendants' violations of the Lanham Act, and are
6 therefore entitled to equitable relief, including a permanent injunction, and damages in an amount
7 to be proven at trial. As a component of damages to be awarded, Plaintiffs and the Class request a
8 substantial award to finance a national corrective advertising campaign to help remedy the harm
9 that Defendants have caused to the goodwill and reputation of the Kona name.

10 **ANSWER:** KIHNKE denies the allegations in Paragraph 140 to the extent they relate to
11 Plaintiffs' alleged damages arising out of KIHNKE's alleged acts or omissions, or Plaintiffs'
12 alleged entitlement to relief based on any such acts or omissions. L&K does not sell any of the
13 products described in this complaint and has not sold any since 2019. KIHNKE lacks sufficient
14 information to admit or deny the other allegations in Paragraph 139, and therefore denies the same.

15
16 141. Because Defendants are sophisticated participants in the coffee industry, with
17 designated coffee buyers and designated coffee product managers, they have full knowledge of
18 exactly what they are buying and what they are selling. Given the egregious nature of the
19 Defendants' false designation of Kona as the source of their commodity coffee beans, Plaintiffs
20 and the Class seek an award of three times actual damages.

21 **ANSWER:** Whether or not Defendants are sophisticated participants in the coffee industry
22 is a statement of subjective opinion, not a factual allegation capable of admission or denial. To the
23 extent a response is required, KIHNKE denies the same. KIHNKE admits that L&K has employees
24 whose job functions include sourcing coffee beans for its coffee products. KIHNKE denies the
25 remaining allegations in Paragraph 141 to the extent they pertain to L&K coffee products. L&K
26 does not sell any of the products described in this complaint and has not sold any since 2019.

1 KIHNKE lacks sufficient information to admit or deny the allegations in Paragraph 140 as related
2 to other defendants, and therefore denies the same.

3
4 142. Pursuant to 15 U.S.C. §1117(a), Plaintiffs and the Class are entitled to recover
5 Defendants' profits earned through the sale of various coffee products that falsely designate Kona
6 as the origin of the coffee beans.

7 **ANSWER:** KIHNKE denies the allegations in Paragraph 142 to the extent they relate to
8 L&K coffee products. KIHNKE lacks sufficient information to admit or deny the allegations in
9 Paragraph 142 to the extent they relate to other accused coffee products, and therefore denies the
10 same.

11
12 143. As a direct and proximate result of their wrongful conduct as alleged above,
13 Defendants have caused, and will continue to cause, immediate and irreparable injury to Plaintiffs
14 and the Class, and to their business, reputation, and goodwill, for which there is no adequate
15 remedy at law. As such, Plaintiffs and the Class are entitled to an injunction under 15 U.S.C. §1116
16 permanently restraining Defendants, both individually and collectively, from using the name
17 "Kona" in their labels, packaging, promotions, marketing, or advertising of any Kona product that
18 they roast, manufacture, package, or label.

19 **ANSWER:** KIHNKE denies the allegations in Paragraph 143 to the extent they relate to
20 L&K coffee products. L&K does not sell any of the products described in this complaint and has
21 not sold any since 2019. KIHNKE lacks sufficient information to otherwise admit or deny the
22 remaining allegations in Paragraph 143, and therefore denies the same.

23
24 144. Pursuant to 15 U.S.C. § 1117, Plaintiffs and the Class seek to recover the cost of
25 this action, and, because this case qualifies as exceptional, their reasonable attorneys' fees.

26 **ANSWER:** KIHNKE admits that the Plaintiffs seek the relief referenced in Paragraph 144,
27 but denies Plaintiffs' entitlement thereto as against KIHNKE. KIHNKE otherwise lacks sufficient

1 information to admit or deny the remaining allegations in Paragraph 144, and therefore denies the
2 same.

3
4 145. Plaintiffs and the Class seek to hold Defendants jointly and severally liable for the
5 lost profits of Plaintiffs and the Class and for corrective advertising necessary to restore the
6 reputation and goodwill of the Kona name.

7 **ANSWER:** KIHNKE admits that the Plaintiffs seek the relief referenced in Paragraph 145,
8 but denies Plaintiffs' entitlement thereto as against KIHNKE. Further, KIHNKE does not have
9 joint liability with all other defendants named herein. KIHNKE otherwise lacks sufficient
10 information to admit or deny the remaining allegations in Paragraph 145, and therefore denies the
11 same.

12 13 **IX. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs request entry of judgment in their favor and against Defendants
15 and other relief as follows:

16 146. Defendants and its agents, officers, employees, representatives, successors, assigns,
17 attorneys and all other persons acting for, with, by and through, or under authority from the
18 Defendants, and each of them, be permanently enjoined from using the term "Kona" in describing,
19 labeling, or packaging Defendants' own coffee products, or advertising, promoting, marketing or
20 selling the same.

21 147. Defendants be adjudged to have violated 15 U.S.C. § 1125(a) by falsely designating
22 their coffee products as originating from Kona, when in fact such goods contain no significant
23 amount of Kona coffee beans, if any.

24 148. Pursuant to 15 U.S.C. §1117, that Defendants be held jointly and severally liable
25 for all damages suffered by Plaintiffs and the Class resulting from the acts alleged herein.

26 149. That as a result of Defendants' deliberate, willful, and intentional conduct in
27 violation of 15 U.S.C. § 1125(a), such damages be trebled.

1 150. Pursuant to 15 U.S.C. §1117, that Defendants be compelled to account for, and to
2 disgorge, any and all of the profits derived by Defendants through illegal acts complained of
3 herein.

4 151. For an award of funds sufficient to carry out a national corrective advertising
5 campaign to mitigate the reputational harm Defendants' wrongful conduct has caused, for which
6 the Defendants shall be held jointly and severally liable.

7 152. That Defendants be ordered, pursuant to 15 U.S.C. §1118, to deliver up for
8 destruction all containers, labels, signs, prints, packages, wrappers, receptacles, advertising,
9 promotional material, and products, or the like in possession, custody or under the control of
10 Defendants that are determined to violate Section 43 of the Lanham Act.

11 153. That the Court declare this to be an exceptional case and award full costs and
12 reasonable attorneys' fees pursuant to 15 U.S.C. §1117.

13 154. That the Court grant prejudgment and post-judgment interest.

14 155. That the Court grant any other remedy to which Plaintiffs and the Class may be
15 entitled as provided by law or equity.

16 156. For such other and further relief, including costs and attorneys' fees, as allowed by
17 law and as the Court deems just and equitable.

18 **ANSWER:** Paragraphs 146-156 of the Third Amended Complaint contain Plaintiffs'
19 prayer for relief to which no response is required. If a response is required, KIHNKE denies that
20 plaintiffs are entitled to any relief whatsoever in this action.

21
22 **DEMAND FOR JURY TRIAL**

23 Plaintiffs respectfully demand a trial by jury on all claims and issues so triable.

24 **ANSWER:** KIHNKE demands a jury trial as well.
25
26
27

AFFIRMATIVE DEFENSES

Below are KIHNKE's affirmative defenses. By setting forth these affirmative defenses, KIHNKE does not assume any burden of proof as to any fact issue or other element of any cause of action that properly belongs to Plaintiffs.

1. The Complaint and its purported causes of action fail to state a claim upon which relief can be granted and the complaint is uncertain.

2. Plaintiffs' causes of action are barred, in whole or in part, because Defendants acted reasonably and in good faith at all times based on all relevant facts and circumstances known by Defendants at the time that Defendants acted.

3. Plaintiffs' claims are barred by the doctrines of waiver, acquiescence, and/or estoppel and/or release of claims.

4. Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches and/or any applicable statute(s) of limitations or repose and/or the doctrine of abandonment.

5. Plaintiffs' claims are barred, in whole or in part, because they lack a good faith basis to allege necessary elements of their claims.

6. Plaintiffs' claims are barred, in whole or in part, as a sanction for knowingly making false allegations in their Complaint, failing to conduct a reasonable inquiry as to the veracity of the allegations Plaintiffs represent as true in their Complaint, and/or knowingly making allegations in their Complaint that, while literally true, are intended to mislead to the Court.

7. Plaintiffs' claims are barred, in whole or in part, because they purport to rely on scientific testing that is wholly unnecessary for any Lanham Act or other claim asserted and which is included only to mislead the Court.

8. Plaintiffs' claims are barred, in whole or in part, because they are misusing the Lanham Act to try to recover attorneys' fees to circumvent class action law.

9. Plaintiff's claims are barred, in whole or in part, because they are against the work and intention of the Hawaii legislature and other governmental entities who specifically regulate

1 coffee from Hawaii and who have been working in the field of coffee and labeling regulation for
2 many years.

3 10. Plaintiffs' claims are barred, in whole or in part, because they fail to establish any
4 likelihood of confusion, deception, or mistake on the part of a reasonable consumer and defendant
5 did not lie or mislead and used the truth at all relevant times.

6 11. Plaintiffs' claims are barred, in whole or in part, because all or part of the damages
7 they allege were caused by the acts or omissions of themselves or other persons or entities for
8 whose conduct Defendants are not legally responsible.

9 12. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have failed to
10 prove and cannot prove any actual damages.

11 13. Plaintiffs' claims are barred, in whole or in part, because they failed to mitigate
12 damages and to give defendants notice and an opportunity to cure any alleged violations.

13 14. Plaintiffs' claims are barred, in whole or in part, because there was no willful
14 conduct on the part of Defendants and, therefore, Plaintiffs cannot recover Defendants' profits.

15 15. Plaintiffs' claims are barred, in whole or in part, by the doctrine of fair use.

16 16. Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

17 17. Plaintiffs' claims are barred, in whole or in part, by the fact that Defendants were
18 not the proximate cause of their damages, if any, or there were supervening or intervening causes.

19 18. Plaintiffs' claims for equitable relief, if any, fail because Plaintiffs have an adequate
20 remedy at law.

21 19. Plaintiffs' claims fail, in whole or in part, because Defendants complied with
22 applicable federal and state statutes and regulations.

23 20. Plaintiffs' claims fail, in whole or in part, because Defendants relied on guidance
24 from relevant government agencies.

25 21. Plaintiffs' claims, and those claims Plaintiffs purport to bring on behalf of members
26 of the putative class, are barred in whole or in part because Plaintiffs and the putative class
27

1 members lack standing to assert the alleged claims and this court lacks subject and personal matter
2 jurisdiction over such claims and lacks venue as well.

3 22. The Court lacks personal jurisdiction over any claims on behalf of absent members
4 of the putative class, as well as personal jurisdiction over Kevin Kihnke and L&K Coffee Co. in
5 this matter and lacks proper venue over such claims.

6 23. Plaintiffs' claims fail, in whole or in part, because their product labels and
7 marketing are expressive works, and thus entitled to freedom-of-speech protections under the First
8 Amendment of the U.S. Constitution, under the Washington State Constitution, and under other
9 applicable statutory or common law protections of speech or expressive works. Plaintiffs' claims
10 are barred to the extent such claims infringe on Defendants' right to free speech.

11 24. The Complaint fails, in whole or in part, because it fails to set forth plausible
12 allegations that satisfy the prerequisites for class certification, including without limitation because
13 the claims by Plaintiffs are neither common nor typical of the claims, if any, by members of the
14 putative class, because the named Plaintiffs are not adequate class representatives, because the
15 putative class is not definite and ascertainable, because interests of certain members of the putative
16 class are in conflict with the interests of other members of the putative class, because individual
17 issues predominate, and because a class action is not the superior way to litigate Plaintiffs' and/or
18 the putative class' claims, if any.

19 25. L&K alleges as a result of the acts, conduct, or omissions of Plaintiffs or their
20 agents, the Complaint and each claim against KIHNKE presented therein is barred by the doctrine
21 of equitable estoppels and/or the doctrine of superior equities and/or plaintiffs' failure to do equity.

22 26. KIHNKE alleges as a result of the acts, conduct, or omissions of Plaintiff or their
23 agents, the Complaint and each claim against KIHNKE presented therein is barred by the doctrine
24 of promissory estoppel.

25 27. KIHNKE alleges that Plaintiffs voluntarily assumed the risk of any and all
26 conditions and damages alleged in the Complaint.
27

1 28. KIHNKE alleges that because Plaintiffs presently have not suffered any cognizable
2 harm or presently incurred any damages, there is no current case or controversy. Plaintiffs' claims
3 are therefore not ripe for adjudication since Plaintiffs have not suffered injury or damages
4 cognizable under any State or Federal laws.

5 29. KIHNKE alleges that the Complaint and each claim is barred by the doctrine of
6 unjust enrichment.

7 30. Plaintiffs have not alleged an adequate basis for the recovery of attorney's fees or
8 costs and is neither entitled to such recovery, nor is any such recovery authorized by law. Further
9 the costs and fees sought are both unreasonable and unnecessary in nature.

10 31. Plaintiffs cannot prove any facts showing that they relied to their detriment,
11 reasonably or otherwise, on any matters stated in the operative Complaint or any information from
12 KIHNKE.

13 32. KIHNKE is not liable because the damages or injuries alleged in the Complaint
14 were caused solely by the acts or omissions of one or more third parties and KIHNKE exercised
15 due care with respect to all matters concerned and made no contracts or representations to Plaintiff.

16 33. KIHNKE is not liable because the damages or injuries alleged in the Complaint
17 were caused solely by the acts or omissions of one or more third parties and KIHNKE exercised
18 due care with respect to all matters concerned and made no contracts or representations to
19 Plaintiffs. Further, KIHNKE is not a co-conspirator, aider and abettor, or otherwise in any
20 relationship with any co-defendants herein that would warrant vicarious or joint liability with any
21 defendant.

22 34. The complaint is defective in that there has been a misjoinder and/or failure to join
23 necessary parties and/or claims and/or claims have been impermissibly split or joined in this action
24 such that a complete adjudication of this matter cannot be made and this matter must be dismissed.
25 Further, there has been a misjoinder of defendants and/or a failure to join a party to this action
26 under FRCP Rule 19.

1 35. This Court lacks personal or subject matter jurisdiction over the claims at issue
2 herein and/or this is an improper venue for this proceeding.

3 36. The complaint is barred based on a Plaintiff's consent or agreement to the matters
4 that the Plaintiff now complains of.

5 37. The Complaint and all relief sought therein is also barred by the doctrines of caveat
6 emptor, the doctrine of the learned intermediary and/or purchaser, and by the doctrine of lack of
7 justifiable reliance.

8 38. That the Plaintiffs themselves did not exercise ordinary care, caution or prudence
9 to avoid the circumstances described in said Complaint and the resulting damages, if any, by them
10 sustained; and that said circumstances and the resulting damages, if any, by them sustained were
11 proximately caused and contributed to by the fault, carelessness and negligence of said Plaintiffs
12 (i.e., the doctrines of comparative and contributory fault/negligence).

13 39. This answering Defendant acted in good faith and did not directly or indirectly
14 perform any acts whatsoever which would constitute a violation of any state or federal rights
15 possessed by the Plaintiffs. This answering Defendant acted in good faith and did not directly or
16 indirectly perform any acts whatsoever which would constitute a breach of any duty owed to the
17 Plaintiffs. Furthermore, defendant has acted at all relevant times in good faith in conformity with
18 the law and the spirit of the law such that there can be no liability on the part of the Defendant.

19 40. The Complaint, and each and every cause of action alleged therein, is barred on the
20 grounds that Plaintiffs lack standing individually to make the claims presented in their Complaint;
21 they also lack standing to form a class of plaintiffs; or to be a representative(s) of a class for
22 purposes of pursuing a class action. Nor do they qualify as class representatives because their
23 claims, if any, are not typical of the class's claims as described in the Complaint. Further, the lack
24 standing to bring the claims they bring and/or are not the real party in interest.

25 41. This answering Defendant is informed and believes, and based thereon alleges, that
26 if any defects or inadequacies exist or existed, which this Defendant denies, Complainants failed
27 to timely notify this answering Defendant of such conditions and failed to give this answering

1 Defendant timely opportunity to secure such conditions. This conduct by Complainants bars them
2 from any relief from this answering Defendant herein. This answering Defendant is informed and
3 believes and upon such information and belief alleges, that Complainant's action is barred by its
4 failure to provide Defendant with written notice within a reasonable amount of time.

5 42. This answering Defendant is informed and believes, and on that basis alleges, that
6 it is entitled to a setoff according to proof and/or otherwise (set-off/off-set/recoupment).

7 43. This answering Defendant is informed and believes and upon such information and
8 belief alleges, that Complainants were reimbursed for a portion of the claimed damages and/or
9 restitution by a third party and have subrogated to that third-party a portion of the damages and/or
10 restitution claimed herein. Moreover, the purported claims and causes of action contained in the
11 Complaint require for their full, final and complete resolution and adjudication the presence of
12 additional necessary and/or indispensable parties that are not participating in this action. By virtue
13 of the aforementioned subrogation and/or Complainant's failure to name indispensable parties,
14 Complainant has violated the rule against splitting causes of action and/or prejudiced this
15 answering Defendant, thus barring Complainant's recovery herein.

16 44. The Complaint and the theories presented therein are barred by the business
17 judgment rule and/or any other similar rule and/or regime and/or doctrine.

18 45. Plaintiffs' claims are equitably barred because L&K Coffee Co. promptly stopped
19 using the word Kona on its products in response to plaintiffs' first complaint to L&K about the use
20 of the word Kona on its labels and packaging.

21 46. The lawsuits is bared by the doctrine of res judicata or collateral estoppel or law of
22 the case.

23 47. The lawsuits is barred by the doctrine of competitor's privilege and the doctrine of
24 free speech and expression.

25 48. The lawsuits is barred by the doctrine of election of remedies.

26 49. The lawsuit sets forth a moot or unripe or hypothetical or abstract question or issue
27 and asks for an advisory opinion.

1 50. Plaintiffs' claims are barred, in whole or in part, to the extent that joint and several
2 liability is an inappropriate or inapplicable remedy under the Lanham Act.

3 51. Defendants reserve the right to amend or supplement any affirmative defenses.
4

5 **KIHNKE'S PRAYER FOR RELIEF**

6 WHEREFORE, KIHNKE requests entry of judgment in his favor and against Plaintiffs' as
7 follows:

8 1. Dismissing Plaintiffs' Complaint in its entirety, with prejudice and on the merits;

9 2. Denying Plaintiffs' requests for damages, costs, attorneys' fees, statutory penalties,
10 equitable relief, and all other relief Plaintiffs seek;

11 3. Awarding Defendants their costs, expenses, disbursements, and reasonable
12 attorneys' fees as and if permitted by law; and

13 4. Awarding Defendants such other further relief that the Court deems just and
14 equitable.
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DEMAND FOR JURY TRIAL

KIHNKE respectfully demands a trial by jury on all claims and issues so triable.

DATED this 1st day of March, 2022. HATTON, PETRIE & STACKLER APC
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CERTIFICATE OF SERVICE

I, John A. McMahon, affirm and state that I am employed by Hatton, Petrie & Stackler APC, in Orange County, in the State of California. I am over the age of 18 and not a party to the within action. My business address is: 12 Journey, Ste 255, Aliso Viejo, CA 92656. On this day, I caused the foregoing to be served on the parties by the Court's CM/ECF filing system.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge.

Dated this 1st day of March 2022, at Aliso Viejo, California.

HATTON, PETRIE & STACKLER, APC

By: /s/ *John A. McMahon*

John A. McMahon, Attorney